

Wochnick, Heather M CIV USN (US)

From: Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West
Sent: Monday, April 25, 2011 7:30
To: Larson, Elizabeth A CIV OASN (EI&E), BRAC PMO West
Subject: FW: ETCA, AOC, TSRS, AOC SOW
Attachments: Lennar_Early Transfer - AOC SOW(67148208_4).DOC; Lennar_Early Transfer - AOC_previous changes tracked(67748758_2).DOC; Lennar_Early Transfer - AOC(67794178_2).DOC; Lennar_Early Transfer - TSRS(66961413_6).DOC; Lennar_Early Transfer - ETCA(66961412_7).DOC

Categories: Hunters Point

-----Original Message-----

From: Barreno, Colin [mailto:colinbarreno@paulhastings.com]
Sent: Friday, April 22, 2011 11:50
To: Amy Brownell; ANauble@waterboards.ca.gov; Andrea Bruss; Barry.Steinberg@KutakRock.com; carr.robert@epa.gov; Yantos, Christopher N CTR OASN (EI&E), BRAC PMO West; cynthia.evanko@aon.com; dcshipman@treadwellrollo.com; Gilkey, Douglas E CIV OASN (EI&E), BRAC PMO West; drathnayake@mactec.com; Elaine Warren; Hart, Gordon E.; gejohnson@treadwellrollo.com; george.schlossberg@kutakrock.com; Gregory_Schilz@aon.com; Kayaci, G Hamide CTR OASN (EI&E), BRAC PMO West; JAB@BCLTLAW.com; Dunn, Jacqueline E CIV NAVFAC SW, PACO; Whitcomb, James H CIV NAVFAC SW; JAustin@Geosyntec.com; jeff.giangiuli@calibresys.com; jill.bensen@ch2m.com; JFenton@mactec.com; Cummins, John M CIV NAVFAC SW; kbrasaemle@techlawinc.com; Forman, Keith S CIV OASN (EI&E), BRAC PMO West; Kloss.Sarah@epamail.epa.gov; Urizar, Lara L CIV NAVFAC SW, PACO; Leslie.Lundgren@CH2M.com; LRHENDRY@mactec.com; Kito, Melanie R CIV NAVFAC SW; RBrandt@Geosyntec.com; RElliott@dtsc.ca.gov; Callaway, Rex CIV NAVFAC SW; Ripperda.Mark@epamail.epa.gov; Liotta, Rita M CIV WEST Counsel; RMiya@dtsc.ca.gov; Hunt, Bob A CTR OASN (EI&E), BRAC PMO West; RSteenenson@waterboards.ca.gov; Loli, Simon CTR OASN (EI&E), BRAC PMO West; sreinis@treadwellrollo.com; stephen.proud@lennar.com; steve.hall@ttemi.com; Suzanne.Hudson@lennar.com; Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West; Thor Kaslofsky; Tiffany Bohee; tim.mower@ttemi.com; Victor Pappalardo
Subject: ETCA, AOC, TSRS, AOC SOW

For your review:

Please see the attached ETCA, AOC, TSRS, and AOC SOW, updated with the City/Lennar/MACTEC team's current edits.

I'm including a second copy of the AOC that retains previous lines of tracked changes. This is for your reference only; please use the clean one going forward. There were substantial formatting and stabilization issues that couldn't be addressed without accepting all previous changes first, then cleaning and adding our edits.

We're looking forward to discussing these revisions with you.

Thanks,
Colin

Colin J. Barreno, Attorney | Paul, Hastings, Janofsky & Walker LLP | 55 Second Street, Twenty-Fourth Floor, San Francisco, CA 94105 | direct: 415 856 7081 | main: 415 856 7000 | colinbarreno@paulhastings.com | www.paulhastings.com <<http://www.paulhastings.com/>>

Paul Hastings is committed to sustainable practices. Reducing printed waste saves resources.

IRS Circular 230 Disclosure: As required by U.S.

Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at www.paulhastings.com.

**APPENDIX C
STATEMENT OF WORK**

**ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL ACTION FOR CLEANUP OF
PORTIONS OF THE FORMER HUNTER'S POINT NAVAL SHIPYARD
U.S. EPA Region 9**

1. PURPOSE

The primary purposes of this Statement of Work ("SOW") are to: (1) implement the Administrative Order on Consent for Remedial Design/Remedial Action ("RD/RA") for Cleanup of Portions of the Former Hunters Point Naval Shipyard ("AOC"), Docket No. 2010-14; (2) expedite removal actions, if appropriate or necessary, to control hazardous substances, pollutants and contaminants of concern; and (3) expedite cleanup of hazardous substances which pose an unacceptable risk to human health and the environment at the Property, excluding Navy Retained Conditions ~~and (4) implement operation and maintenance procedures until the clean-up is complete.~~

This SOW addresses approximately 81 acres of the former Hunters Point Naval Shipyard located in San Francisco County, CA. The Property includes Parcels B (40.7 acres and excluding IR Sites 07/18) and G (40.3 acres).

This SOW outlines the work the Respondents, San Francisco Redevelopment Agency (SFRA) and CP Development Co., LP, have agreed to perform pursuant to the AOC. This SOW does not limit or preclude the U.S. Environmental Protection Agency (EPA) from requiring additional work.

The Parties acknowledge that the Navy has completed significant portions of the remediation of groundwater, soil, and soil gas contamination on the Property pursuant to the Amended Record of Decision (ROD) for Parcel B (1/2009) and the ROD for Parcel G (2/2009) and that the Work described below remains to be completed.

Unless otherwise expressly provided herein, terms used in this SOW which are defined in the AOC shall have the meaning assigned to them in the AOC.

Deliverables required under this SOW shall be submitted according to Section XIV (EPA Approval of Plans and Other Submissions) of the AOC. EPA will review and approve the documents in consultation with the Department of Toxic Substances Control (DTSC) and the Regional Water Quality Control Board (RWQCB). Deliverables will be provided to the Navy for information and comment. EPA will determine a schedule for the submittal and review of deliverables in consultation with DTSC and the RWQCB. Respondent(s) may submit deliverables in advance of the schedules presented herein or may combine several deliverables into a composite submittal. If deliverables are combined into a composite submittal, Respondent(s) shall include each deliverable as a

Commented [PH1]: [AB] NOTE TO REVIEWERS: - This phrase (4) which stated "implement operation and maintenance procedures until the clean-up is complete" was deleted because it is not needed and adds unnecessary confusion. All Long-Term Obligations including operation and maintenance are already covered by (1) implementing the AOC which includes Section 23 which covers this concept

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

discrete and readily identifiable section within the larger submittal document. This SOW does not preclude the shortening of the schedules presented herein if deliverables submitted in advance of their deadlines are approved by EPA in consultation with DTSC and RWQCB.

2.0. TECHNICAL SPECIFICATIONS AND REQUIREMENTS

The major components of the remediation activities that comprise the Work are outlined below:

1. Project Management;
2. Public Involvement;
3. Remedial Action Work Plan;
4. Remedy Implementation;
5. Remedial Action Completion Report and Closeout Inspections;
6. ~~O&M/Performance Monitoring~~Long-Term Obligations; and
- ~~7.Five Year Reviews; and~~
- ~~8.7.~~ Removal Actions.

SFRA shall provide the necessary qualified and licensed personnel, equipment, and resources to successfully execute the Work under the AOC.

2.1. Project Management

Within 30 calendar days of the Effective Date of the AOC, a scoping meeting shall be held to discuss the overall project. The purpose of the meeting shall be for the Respondent(s) to describe the proposed approach to complying with the AOC, in particular, Section IX (Performance of the Work by Respondent(s), and this SOW and to solicit input from EPA, DTSC and RWQCB. The following topics, at a minimum, should be addressed: (i) How Respondent(s) shall prioritize tasks/parcels; (ii) Respondent's preliminary schedule for accomplishing the Remedial Action (RA); and (iii) contingencies for stop work or reprioritization of tasks or parcels due to unanticipated events. Once EPA has approved the proposed approach for accomplishing the work, EPA, at its discretion, and in consultation with DTSC and RWQCB, shall present a schedule showing the dates each task and/or deliverable is to be completed.

2.1.1 RA Progress Meetings and Reports

Respondent(s) shall coordinate and conduct monthly RA progress meetings with EPA, DTSC, RWQCB, and Navy. The Progress Meetings shall address the status of project design, construction, and implementation activities, schedule changes, test results, observations and findings, issues of noncompliance, and upcoming activities. The Respondent(s) shall document project progress on a monthly basis. The monthly reports shall report on ongoing field audit findings and any corrective actions, planned or taken. The monthly reports shall also include: 1) summary of activities at the site; 2) list of any building demolitions; 3) summary of any field discoveries and actions; 4) any data

Commented [PH2]: [AB] NOTE TO REVIEWERS – Long Term Obligations is a defined term that includes five year reviews so we don't need to call out five year reviews separately
Formatted: Bullets and Numbering

quality assessments; 5) any other anticipated intrusive activities and 6) planned activities including field work and deliverables for the coming month. Upon approval by EPA, and in consultation with DTSC and RWQCB, the frequency of these meetings and reports may be reduced, eliminated, or replaced with written reports.

2.1.2 Administrative Record and Public Repository

The Respondent(s) shall assist the Navy with the Administrative Record (AR) including ensuring all project documents, including drafts, draft finals, and final versions, along with comments and responses to comments and all correspondence are available in the AR for review by the public.

SFRA shall maintain a project repository, as well as provide copies to the Navy for the Navy's maintenance of the AR files as required by the Comprehensive Environment Response, Compensation, and Liability Act (CERCLA), the National Contingency Plan (NCP), and other applicable laws and regulations.

2.2 Public Involvement

The Respondent(s) shall implement the sections of the Navy's Community Involvement Plan (CIP) that are appropriate for the Site. The Respondent(s) shall submit a short description of their proposal for implementing the elements of the Navy's CIP that are applicable to the Site for approval by the EPA, in consultation with DTSC, RWQCB and the Navy, within 30 calendar days of the Project Scoping Meeting. The proposal should include how the Respondents Community Involvement efforts will integrate with the Navy's existing CIP. The Respondent(s) shall prepare and submit a Community Involvement Plan (CIP) that is consistent with the Navy's approved CIP and the NCP for approval by the EPA, in consultation with DTSC, RWQCB and the Navy, within 30 calendar days of the Project Scoping Meeting. The Respondent(s) may develop a CIP that relies on or is integrated with the Navy's existing CIP. The Respondent(s) shall be responsible for notification to, involvement with, and solicitation of input from the public in coordination with the regulatory agencies (EPA, DTSC, and RWQCB) and the Navy. The Respondent(s) shall assist EPA with community relations functions as needed including preparation for community meetings, preparation of fact sheets, and interviews with tenants and the surrounding community. The Navy has prepared a Community Involvement Plan (CIP) that is based on an understanding of the issues and concerns of the community and the citizens' indicated preferences for being involved in processes and decisions regarding Site activities. The CIP identifies the location of the Administrative Record repository and other documents to ensure community access to Site information and understanding of Site activities. The CIP provides opportunities for public input throughout the remedial planning and action process.

2.3 Remedial Action Work Plans

The Respondent(s) shall prepare and submit a Remedial Action Work Plan (RAWP), within 90 calendar days of the Project Scoping Meeting, for review and approval by EPA

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

and the Navy, in consultation with DTSC and RWQCB. The RAWP shall be the primary plan by which the Respondent(s) controls the Work necessary to implement the remedy and achieve the Performance Standards as set forth in design plans and specifications in the approved final ~~remedial design documents~~ (“~~Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18~~” [ChaduxTt, December 10, 2010] and “~~Final Remedial Design Package Parcel G~~” [ChaduxTt, October 4, 2010])Remedial Design Package Report(s). The RAWPs may also include requests for revisions to the Remedial Design Package Report(s)~~approved final remedial designs~~. Any revisions to the Remedial Design Package Report(s)~~remedial designs~~ must still meet the requirements of the CERCLA RODs and the AOC and be approved by EPA, in consultation with DTSC and the RWQCB. The RAWP shall describe the procedures Respondent(s) will employ to perform the activities required and the specific objectives of these activities in performing the Work. The following areas shall be addressed in one or more RAWPs:

- Project background narrative with a statement of problems posed by the Property and the objectives of the remedial actions;
- Sequencing of the Work, including personnel and facilities mobilization logistics, significant activities and deliverables, and a comprehensive project schedule;
- Detailed description of each remedial activity, with design drawings as appropriate, and the methods and procedures that will be used to implement the remedy and achieve the Performance Objectives;
- Format for Progress Reports to be submitted;
- Control of Property Access;
- Format of regularly scheduled remedial construction progress meetings;
- Procedures for modifying the RAWP, final plans and designs, other management plans, deliverables and schedules required by this SOW;
- Activity-specific sampling plans and necessary instrument calibration, if not covered by currently approved sampling plans;
- Procedures for management and organization of construction, field operations and Work activities including equipment maintenance and QA/QC;
- Processes, procedures and safeguards for ensuring containment of contaminants and pollutants and compliance with applicable federal, state and local requirements that may be triggered by the RA;
- Procedures for documenting field changes during construction;
- Procedures for the monitoring and mitigation of impacts to habitat, existing buildings, permanent structures, and occupants;
- Waste Materials storage and disposal; and
- Procedures for the integration and coordination with any entities involved in any future redevelopment of the Property, including procedures for transfer and dissemination of information on design, construction, operations, monitoring, Property security and access, corrective action, emergency response, and community involvement.

2.3.1 Additional Plans

Commented [mr3]: What's the status of Navy approval? Is the RAWP a special case?

Several additional plans supporting the remedial action shall be included with the RAWP as required below.

2.3.1.1 Dust Control Plan and Asbestos Dust Mitigation Plan

The Respondent(s) shall prepare and submit a Dust Control Plan (DCP) and an Asbestos Dust Mitigation Plan (ADMP) for review and approval by EPA in consultation with the DTSC and the RWQCB. A Dust Control Plan identifies the measures that will be taken to reduce particulate emissions during the Work. The Dust Control Plan shall be prepared in accordance with the requirements in Article 31 of the San Francisco Health Code and certain Bay Area Air Quality Management District (BAAQMD) regulations often applicable to earth moving activities. Exposure of onsite construction workers to dust containing Chemicals of Concern (COCs) will be minimized, and generation of nuisance dust will also be minimized to comply with SFDPH requirements prohibiting visible dust on San Francisco construction sites.

Naturally occurring asbestos (NOA) has been found in the serpentine bedrock and soil throughout the Hunters Point/Bayview area. An Asbestos Dust Mitigation Plan will be submitted that describes the measures to be taken to minimize the creation of potential asbestos-containing dust and comply with requirements of the California Air Resources Board Airborne Toxic Control Measures (ATCM).

2.3.1.2 Health and Safety Plan

The Respondent(s) shall prepare and submit a health and safety plan (HASP) for review by EPA in consultation with DTSC and the RWQCB. The HASP shall be designed to protect on-site personnel as well as off-site workers, tenants and residents from physical, chemical, and other hazards posed by the construction, operation and maintenance activities of the RA.

2.3.1.3 Construction Quality Assurance Plan

The Respondent(s) shall prepare and submit a Construction Quality Assurance Plan (CQAP) for review and approval by EPA in consultation with the DTSC and the RWQCB. The CQAP is a document that specifies procedures to ensure that the completed RA works meets or exceeds all design criteria and specifications. The CQAP should discuss: (1) roles and responsibility of those completing the construction; (2) qualifications of personnel completing the construction; (3) inspection activities; (4) sampling requirements and (5) documentation for the construction.

2.3.1.4 Sampling & Analysis Plan (SAP)/Quality Assurance Project Plan (QAPP)

Respondent(s) shall prepare a Sampling and Analysis Plan (SAP) for groundwater monitoring and submit it for review and approval by EPA, in consultation with DTSC and RWQCB. The SAP shall ensure that data collection and analytical activities are conducted in accordance with EPA guidelines, including EPA SW-846. The SAP shall provide a mechanism for planning field activities and shall consist of a Quality Assurance

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

Project Plan (QAPP) and Field Sampling Plan (FSP). The SAP shall also cover any other anticipated sampling activities, such as soil, or soil vapor for modifying Areas Requiring Institutional Controls (ARICs), or provide for the submission of SAP addendums on an as needed basis.

The QAPP shall describe the policy, organization, functional activities and quality assurance and quality control protocols necessary to achieve Data Quality Objectives (DQOs) dictated by the intended use of the data. The QAPP shall include Quality Assurance (QA) and Quality Control (QC). QA shall be an integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of the type and quality needed to meet project requirements defined in the RA Work Plan. QC shall be the overall system of technical activities that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established in the RA Work Plan. The QAPP shall provide for oversight of field activities and data by EPA, DTSC and RWQCB. The FSP shall provide guidance for all fieldwork by defining in detail the sampling and data-gathering methods to be used on the project by parcel or sub-parcel. The FSP should clearly state sampling objectives; necessary equipment; sample types, locations and frequency; analyses of interest; and a sampling and deliverables schedule.

2.3.1.5 Site Access and Security Plan

The Respondent(s) shall prepare and submit to EPA for review and approval in consultation with the DTSC and the RWQCB a Site Access and Security Plan. This plan should describe activities the Respondent(s) will undertake to monitor and control access to the Property during implementation of the response actions and period of work performance.

2.3.1.6 Operation and Maintenance Plan

The Respondent(s) shall update, as necessary to reflect any changes in site conditions or knowledge, the Operation and Maintenance (O&M) Plan from the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010), and “Final Remedial Design Package Parcel G” (ChaduxTt, October 4, 2010) Remedial Design Package Report(s). Any updates shall be submitted to EPA for review and approval in consultation with the DTSC and the RWQCB.

The Respondent(s) shall prepare and submit to EPA for review and approval in consultation with DTSC and the RWQCB, an Operation and Maintenance (O&M) Plan to cover long term operation and maintenance of the RA. The final O&M Plan shall be submitted by the Respondent(s) prior to or at the completion of construction of the RA and shall incorporate any modifications or corrections.

The O&M Plan shall include the following:

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

- Description of existing and new Property facilities and environmental control systems;
- Integration and coordination requirements of the existing and new systems;
- Property administration, utility and support facilities, data management and management information systems, and reporting;
- Procedures for verifying and documenting compliance with QC requirements;
- Procedures of operational emergency response;
- Maintenance procedures and schedules;
- Compliance and process monitoring procedures and schedules;
- Formats for Noncompliance Notification, Compliance Action Plan, and Noncompliance Correction Report;
- Contingency plans with cost estimates that provide an organized, planned, and coordinated course of action to be followed by the Respondent(s) in the case of an unexpected failure of remedial systems, or release or threat of release of Waste Materials;
- Emergency repair and replacement procedures;
- Appendices, including sampling plans for each of the monitoring and sampling activities, if not addressed as separate documents;
- Appendix addressing Compliance Testing, if not addressed as separate documents;
- Procedures for management and control of project data; and
- Procedures for transitioning O&M requirements and activities to new entities involved in any future redevelopment, if approved by EPA.

2.3.1.7 Land Use Control ~~Implementation Plan~~ Remedial Design

The Respondent(s) shall update, as necessary to reflect any changes in site conditions or knowledge, the Land Use Control Remedial Design from the “~~Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18~~” (ChaduxTt, December 10, 2010), and “~~Final Remedial Design Package Parcel G~~” (ChaduxTt, October 4, 2010) Remedial Design Package Report(s). Any updates shall be submitted to EPA for review and approval in consultation with the DTSC and the RWQCB.

The Respondent(s) shall prepare and submit to EPA for review and approval in consultation with DTSC and the RWQCB a Land Use Control Implementation Plan (LUCIP) describing procedures for implementation, monitoring and enforcement of any Institutional Controls (ICs) for the Property, including but not limited to land use covenants, as selected in the ROD(s). The LUCIP must be consistent with the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010), and “Final Remedial Design Package Parcel G” (ChaduxTt, October 4, 2010).

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

2.3.1.8 Storm Water Pollution Prevention Plan

The Respondent(s) shall prepare and submit to EPA for review and approval in consultation with DTSC and the RWQCB, a Storm Water Pollution Prevention Plan (SWPPP) and related monitoring and reporting activities.

2.3.1.9 Vapor Intrusion Mitigation Remedial Design

Commented [mr4]: This section is new in this version.

The Respondent(s) shall prepare and submit to EPA for review and approval in consultation with the DTSC and the RWQCB a Vapor Intrusion Mitigation Remedial Design that meets the design requirements in the Remedial Design Package Report(s) “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010), “Final Remedial Design Package Parcel G” (ChaduxTt, October 4, 2010), and the requirements for vapor mitigation in “Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final” (DTSC, December 15, 2004, and revised on February 7, 2005).

2.4 Remedy Implementation

The Navy has followed the CERCLA process in the prior characterization of environmental conditions, analysis of remedial action alternatives, and selection of the remedy. Site characterization data are available in various reports referenced in Appendix A herein and in the Administrative Record files. The site-specific remedial activities required by the CERCLA RODs are summarized in Table 1. The remedial actions, including ~~institutional controls~~ Long-Term Obligations, for the Site will comply with the AOC, CERCLA, the NCP, and other applicable state and federal laws and regulations and shall be protective of human health and the environment. The CERCLA RODs, Remedial Design ~~Packages~~ Package Report(s) and the AOC set forth the specific components of the remedy to be implemented at the Site. Those remedial components are summarized below:

2.4.1 Soil Vapor Extraction (SVE) System Expansion and Operation

SFRA shall expand and operate the SVE system inside Building 123 (Parcel B). SFRA shall decommission the SVE system after approval from the EPA, DTSC and RWQCB. Details on operation of the SVE system including monitoring, reporting, and ~~O&M~~ maintenance activities are contained in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010) Parcel B Remedial Design Package Report. The SVE system shall be operated until the remedial action objectives specified in the Parcel B Remedial Design Package Report and the RAWP have been met (achievement of soil gas action levels or until systematic asymptotic conditions are reached without reasonable indication of further reduction based on system monitoring results). The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). This task is only applicable to Parcel B.

Commented [mr5]: Response to Bob E: This language is appropriate as opposed to the language in the gw section because our SV action levels correspond directly to the vapor intrusion risk. The gw action levels are an estimate. Also, we can stop at asymptotic conditions because the vapor barriers will be required if action levels aren't achieved.

2.4.2 Groundwater Remediation

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

SFRA shall perform one round of polylactate injection at the IR Site 10 Volatile Organic Compound (VOC) plume (Parcel B) for soil vapor intrusion source control and to enhance natural attenuation of VOCs in groundwater as presented in the Parcel B Remedial Design Package Report(s)~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010)~~. Injection and subsequent monitoring of the natural attenuation will be conducted in accordance with requirements and procedures specified in the Parcel B Remedial Design Package Report and RAWP. SFRA shall conduct groundwater monitoring until the remedial action goals for groundwater are achieved or until residual VOC concentrations in groundwater are shown not to pose an unacceptable risk to human health through the vapor intrusion pathway, as presented in the approved CERCLA RODs and the RAMPs contained in ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~the Parcel B Remedial Design Package Report. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). This task is only applicable to Parcel B.

Commented [RLE6]: This language seems more appropriate for use above instead of the language used. See my comment 4 above.

Commented [mr7]: See response above.

2.4.3 Covers over Soil

SFRA shall construct a durable cover over the Site that (1) meets the specifications of the Remedial Design Package Report(s)~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010)~~, and ~~“Final Remedial Design Package Parcel G” (ChaduxTt, October 4, 2010)~~, or (2) meets the requirements of San Francisco Department of Public Works or the San Francisco Department of Building Inspection codes, or (3) fulfills the requirements of the AOC or is otherwise approved by the Environmental Regulatory Agencies. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for covers must be achieved no later than 7 years after the date of execution of the AOC.

2.4.4 Shoreline Revetment

SFRA shall construct a shoreline revetment for certain portions of the shoreline at Parcel B that meets the specifications of the Parcel B Remedial Design Package Report~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010)~~ to prevent erosion and migration of underlying soil and sediment into San Francisco Bay. The shoreline revetment shall meet the specifications of the Parcel B Remedial Design Package Report~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010)~~, or otherwise be approved by the Environmental Regulatory Agencies. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for shoreline revetment must be achieved no later than 7 years after the date of execution of the AOC. This task is only applicable to Parcel B.

2.4.5 Soil Vapor Intrusion Mitigation Systems

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

SFRA shall implement engineering controls to prevent exposure to VOCs in soil gas that may accumulate within existing or future enclosed structures at concentrations that would pose unacceptable risk via inhalation of indoor vapors. The Navy has established an initial ARIC for VOC vapors based on soil gas surveys conducted prior to redevelopment. The initial ARIC is documented in the ~~XXX~~.

Commented [mr8]: Need reference

Vapor mitigation shall meet the remedial action objectives stated in the ~~"Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, December 10, 2010), "Final Remedial Design Package Parcel G" (ChaduxTt, October 4, 2010)~~ Remedial Design Package Report(s), and the requirements for vapor mitigation in "Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final" (DTSC, December 15, 2004, and revised on February 7, 2005). The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

Any proposed construction of enclosed structures within the VOC ARIC must be approved by the FFA Signatories prior to construction in order to ensure that potential unacceptable risk from VOC vapors is reduced to acceptable levels. Enclosed structures within the VOC ARIC shall not be occupied until the Owner has requested and obtained approval (through approval of a RACR or similar document) that any necessary engineering controls or design alternatives have been properly constructed and that the VOC vapor risk level is acceptable.

~~2.4.6 Long-term Groundwater Monitoring~~

~~The Respondent(s) shall monitor elevations of and chemical concentrations in groundwater according to the requirements in the RAMPs that are included in "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, December 10, 2010), and "Final Remedial Design Package Parcel G" (ChaduxTt, October 4, 2010). Long-term groundwater monitoring shall continue until such time as the regulatory agencies have issued regulatory closure for groundwater conditions (See Section 2.5).~~

Commented [PH9]: Note to reviewers - Long Term Groundwater Monitoring has been moved to Long Term Obligations section

~~2.4.86 Implementation of~~ Land Use Controls

Land Use Controls are required to assure protection of human health and the environment at the time of transfer of the Site, prior to and during the implementation of response actions at the Site. As defined in this Order, Land Use Controls or "LUCs" means activity and use restrictions specified in CERCLA Record of Decisions and LUC RDs as further modified in the RMPs. The Navy, EPA, DTSC and RWQCB have prepared, in consultation with Respondents, Covenants to Restrict Use of Property ("CRUPs") that incorporate the restrictions in the LUCs. The CRUP(s) and Deed(s) are signed and recorded at the time of transfer of title. The Respondent(s) shall maintain the LUCs.

The LUC RDs, CRUP(s) and Deed(s) reference the Risk Management Plans (RMP). Respondents have prepared, and EPA, the Navy, DTSC and RWQCB have approved the RMPs. The RMPs detail certain restricted activities, including many types of

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

development activities that are pre-approved by EPA, DTSC and RWOCB as long as procedures and protocols detailed in the RMPs are followed. Requirements and procedures in the RMPs must be implemented and followed by the Respondent(s) and all subsequent property owners.

The SFRA will assume responsibility for: annual monitoring of RMP compliance activities, annual inspection reporting, annual monitoring of long-term maintenance of the remedy and ensuring annual enforcement of the RMP in the event of non-compliance by Owners, Lessees, permittees, tenants or any other party with the legal right to perform subsurface work on the property. The SFRA will work with the regulatory agencies to confirm compliance with the Land Use Controls, RMP protocols and reporting obligations. If the SFRA deems it appropriate, non-compliant Owners, Lessees, permittees, tenants or any other party with the legal right to perform subsurface work on the property will be referred to the SFDPH and the DTSC for additional enforcement activities.

The SFRA will submit an annual inspection report to the FFA signatories that will include:

- Documentation (photos, inspection reports, maps, etc), based on a drive-by inspection of drivable areas of site and a walk around inspection, if needed, of parks/open space, of the current state of the property – location of fences, conditions of fences, location of areas with approved cover remedies, etc.
- Table listing areas where current pre-approved restricted activities are being conducted based on observations in the field
- Table listing City permits (SFDPH, SFDDBI, SFDPW) issued during the previous year involving pre-approved restricted activities with a brief description of the activity (e.g. grading, excavating, etc)
- Table listing notices of restricted activities requiring FFA signatory approval received during the previous year
- Descriptions of any previously unknown conditions and related response activities
- Descriptions of any non-compliance conditions that were observed during the drive-by inspections and how they were resolved, if known
- Table compilation of individual property owners self-certification of compliance with RMPs and in particular prohibited activities (e.g. no use of groundwater and no growing of edible plants in native soil)

The SFRA will submit an annual inspection report to the FFA signatories. The submittal will include a brief summary letter documenting the number of property owners and

Formatted: Bulleted + Level: 1 + Aligned at: 0.38" + Tab after: 0.63" + Indent at: 0.63"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.38"

Formatted: Bulleted + Level: 1 + Aligned at: 0.38" + Tab after: 0.63" + Indent at: 0.63"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.38"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.38"

Formatted: Bulleted + Level: 1 + Aligned at: 0.38" + Tab after: 0.63" + Indent at: 0.63"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.38"

Formatted: Bulleted + Level: 1 + Aligned at: 0.38" + Tab after: 0.63" + Indent at: 0.63"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.38"

Formatted: Bulleted + Level: 1 + Aligned at: 0.38" + Tab after: 0.63" + Indent at: 0.63"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.38"

Formatted: Bulleted + Level: 1 + Aligned at: 0.38" + Tab after: 0.63" + Indent at: 0.63"

Formatted: Bullets and Numbering

Commented [EW10]: NOTE TO REVIEWERS: The CRUP should obligate subsequent property owners to prepare the self-certification envisioned by this language. All the other obligations listed above are being assigned to SFRA by including them in this AOC SOW.

Formatted: Indent: Left: 0.38"

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

~~condition of their property, any problems noted in the annual inspection reports, and follow-up action taken on any noted problems. All activity and use restrictions are specified in the form of deed restrictions and the Covenant to Restrict Use of Property (CRUP) between DTSC and the Navy and will be enforceable against all future owners, tenants and occupants of the property by DTSC and the Navy. The Respondent(s) shall implement the Land Use Control requirements as detailed in the LUC RDs that are included in the "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, December 10, 2010), "Final Remedial Design Package Parcel G" (ChaduxTt, October 4, 2010), and CRUP(s) and Deed(s) that are signed and recorded at the time of transfer of title.~~

~~The LUC RDs, CRUP(s) and Deed(s) reference the Risk Management Plans (RMP). The RMPs detail certain restricted activities, including many types of development activities that are pre-approved by EPA, DTSC and RWQCB as long as procedures and protocols detailed in the RMPs are followed. Requirements and procedures in the RMPs must be implemented and followed by the Respondent(s) and all subsequent property owners. SFRA shall conduct the required annual inspections for land use controls and activity restrictions and shall follow up on deficiencies and violations noted and refer non-compliant owners, tenants and occupants to the DTSC for additional enforcement if necessary.~~

2.5 Remedial Action Completion Report (RACR) and Regulatory Closure Documentation

2.5.1 Pre-Final Inspection

Within 90 calendar days after the Respondent(s) concludes that the RA has been fully performed and the Performance Standards have been attained, the Respondent(s) shall schedule and conduct a pre-certification inspection to be attended by the Respondent(s), EPA, DTSC and RWQCB to verify that the remedy is operational and functional.

2.5.2 Final Inspection

Upon certification by EPA that all items identified by EPA in consultation with DTSC and the RWQCB during the Pre-Final Construction Inspection have been addressed, the Respondent(s), EPA, DTSC and RWQCB, if they choose, shall conduct a Final Construction Inspection. The purpose of the inspection is to verify that all construction has been completed according to the RD and RAWP, that the remedy meets the Property-specific remediation goals, as specified in the ROD, and that the remedy is operating properly and successfully.

2.5.3 Remedial Action Completion Report

Upon satisfactory completion of the Final Inspection, the Respondent(s) shall, within 60 calendar days of the inspection, submit to EPA for approval, in consultation with DTSC

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

and RWQCB, a written RACR. Approval of the RACRs by EPA, DTSC and the RWQCB signifies Certification for Completion of the Remedial Action.

A RACR should document the completion of the RA and may encompass the entire Site or a portion of the Site or a particular site-specific remedial action within the Site. For each of the remedial actions, the following standards apply:

- Performance Standards specified the RODs or removals are met;
- ~~ICs~~ Land Use Controls are in place and effective;
- The Property is protective of human health and the environment; and
- The only remaining activities at the Property are ~~O&M, including ICs monitoring and reporting~~ Long-Term Obligations.

The RACR shall document and provide justification for any changes in remedial systems that may have resulted from modifications implemented during compliance testing.

The RACR shall be submitted for approval by EPA, in consultation with DTSC and RWQCB. The draft RACR will be subject to the review procedures in Section XIV of the AOC. The draft final RACR will be considered to be final if no comments are received within the 30-day comment period.

The RACR typically contains ten sections, but should be tailored to the type of remediation conducted on the Property. The RACR shall be organized as follows, unless an alternative structure has been approved by EPA:

- I. Introduction
- II. Operable Unit Background
- III. Construction Activities
- IV. Chronology of Events
- V. Performance Standards and Construction Quality Control
- VI. Final Inspection and Certifications
- VII. ~~Operation and Maintenance, including IC~~ Long-Term Obligations
- VIII. Summary of Project Costs
- IX. Observations and Lessons Learned
- X. Operable Unit Contact Information
- XI. Appendix A - Remedial Action Report
- XII. Appendix B - Cost and Performance Summary

The RACR shall include a discussion of who is responsible for continued ~~O&M~~ Long-Term Obligations, including O&M of LUCs. The RACR shall include as-built drawings signed and stamped by a professional engineer registered in the State of California along with a statement that the RA has been completed in full satisfaction of the requirements of the AOC. The report shall also contain the following statement, signed by a responsible corporate official of the Respondent(s) or the Respondent's Project Coordinator:

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

To the best of my knowledge, after thorough review, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

2.6 ~~Operation and Maintenance~~/Performance Monitoring

Prior to issuance of a Certificate of Completion, the Respondent(s) shall implement performance monitoring as required by the approved Remedial Design Package Report(s) (as updated) for the RA once it is demonstrated that the RA components are operational and functional. Respondent(s) shall submit for review to EPA, DTSC and the RWQCB on a monthly basis any sampling, analysis and system performance data for any treatment or engineering systems required to be monitored during the performance monitoring phase. The frequency of the reports may be adjusted upon agreement between the Respondent(s) and EPA, in consultation with DTSC and the RWQCB. Once the performance monitoring is complete, the Respondents will submit a RACR in order to obtain a Certificate of Completion for the RA. If needed, an update to the O&M Plan will be submitted that is in conformance with the RAWP and/or RACR.

During performance monitoring, the Respondent(s) shall prepare and submit for review to EPA, DTSC and the RWQCB annual progress reports. The progress report should include the same information as required in the RA monthly progress reports as well as an evaluation of the effectiveness of any system in meeting clean-up and performance goals of the RA.

~~Respondent(s) shall implement performance monitoring and operation and maintenance procedures as required by the approved O&M Plan (as updated) for the RA once it is demonstrated that the RA components are operational and functional (ChaduxTt, December 10, 2010; ChaduxTt, October 4, 2010).~~

~~Respondent(s) shall submit for review to EPA, DTSC and the RWQCB on a monthly basis any sampling, analysis and system performance data for any treatment or engineering systems required to be monitored during the O&M phase. The frequency of the reports may be adjusted upon agreement between the Respondent(s) and EPA, in consultation with DTSC and the RWQCB.~~

~~Respondent(s) shall also prepare and submit for review to EPA, DTSC and the RWQCB annual progress reports during the operation and maintenance/performance monitoring phase of the RA. The progress report should include the same information as required in the RA monthly progress reports as well as an evaluation of the effectiveness of any system in meeting clean up and performance goals of the RA. The SFRA will update the O&M plan in conformance with the RAWP and/or the RACR.~~

~~Respondent(s) may enter in an O&M Agreement with DTSC that supersedes the O&M Plans associated with this Order two years after the RACR(s) are approved. Any such O&M Agreement must be consistent with this Order and the O&M~~

Formatted: Tab stops: Not at 1.13" + 2" + 2.5" + 3" + 3.5" + 4" + 4.5" + 5" + 5.5" + 6"

Commented [mr11]: Bobs – anything to add?

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

requirements in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, December 10, 2010), “Final Remedial Design Package Parcel G” (ChaduxTt, October 4, 2010).

SFRA shall conduct the required annual inspections for land use controls and activity restrictions and shall follow up on deficiencies and violations noted and refer non-compliant owners, tenants and occupants to the DTSC for additional enforcement if necessary. Respondent(s) shall also prepare and submit for review to EPA, DTSC and the RWQCB annual reports on compliance with the LUCs.

2.7 Long-Term Obligations

Long-Term Obligations consist of

- Long-term Operation and Maintenance
- Long-term Groundwater Monitoring
- Long-term Public Involvement
- Five Year Reviews
- Land Use Controls
- Institutional Controls

Formatted: Bullets and Numbering

2.7.1 Long-Term Operation and Maintenance

Once a Certificate of Completion has been issued, the Respondent shall implement all Operation and Maintenance activities in conformance with O&M Plans (as updated). During Operation and Maintenance, the Respondent(s) shall prepare and submit for review to EPA, DTSC and the RWQCB annual progress reports. The progress report should include the same information as required in the RA monthly progress reports as well as an evaluation of the effectiveness of any system in meeting clean-up and performance goals of the RA.

Formatted: Font: Bold

Formatted: Font: Bold

2.7.2 Long-Term Groundwater Monitoring

The Respondent(s) shall monitor elevations of and chemical concentrations in groundwater according to the requirements in the RAMPs that are included in Remedial Design Package Report(s). Long-term groundwater monitoring shall continue until such time as the regulatory agencies have issued regulatory closure for groundwater conditions (See Section 2.5).

Formatted: Font: Bold

Formatted: Font: Bold

2.7.3 Long-Term Public Involvement

The Respondent(s) shall update the CIP as necessary to reflect the decreased level of activity on the Site. The Respondent may propose reducing or eliminating aspects of the CIP as work efforts continue to decrease. Updates or proposals for reducing or

Formatted: Font: Bold

Formatted: Font: Bold

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

eliminating aspects of the CIP shall be submitted for approval by the EPA, in consultation with DTSC, RWQCB and the Navy.

2.7-7.4 Five-Year Reviews

At sites where contaminants will remain at levels that will not permit unrestricted use of the site, a review will be conducted no less frequently than once every five years to ensure that the implemented remedy continues to be protective of human health and the environment.

The Respondent(s) shall complete and submit a Five Year Review Report for review and approval by EPA in consultation with DTSC and RWQCB no less often than every five years beginning in 2023. The Navy will prepare the five-year review reports for 2013 and 2018 and submit them for review and approval by EPA, in consultation with DTSC and the RWQCB. Reports shall be similar to previous five-year review reports for HPNS and consistent with EPA guidance. The Five Year Review Reports should include the following information:

- Property summary;
- Description and objectives of remedial actions;
- A synopsis of the Work;
- Summary of activities addressing compliance with all Applicable or Relevant and Appropriate Regulations (ARARs) and Performance Standards;
- Summary of ICs monitoring and enforcement activities;
- Description of community relations involvement activities and results and impacts of these activities;
- Areas of Noncompliance and status of corrective actions implemented;
- Description of any outstanding activities required by the AOC or SOW and schedule for implementation;
- Summary of Costs for performing the Work;
- Proposed suspension and termination of O&M for any environmental control system or control action. Respondent(s) shall include documentation demonstrating that Performance Standards have been and will continue to be achieved.
- Analysis of O&M activities and any cost increases to determine if such increases warrant proposals of additional remedial actions to reduce O&M activities or contain rising costs; and
- Recommendations for future response actions.

Based on reviews of monitoring and O&M data or other Property-specific circumstances, EPA may require Respondent(s) to perform additional studies and investigations and to summarize and analyze the results for EPA review and approval. EPA may also require Respondent(s) to perform additional response actions.

2.7.5 Land Use Controls

As defined in the Order and described in Section 2.4.6, the SFRA shall maintain, monitor, inspect and enforce the Land Use Controls. SFRA will also conduct RMP annual inspection and reporting as described in Section 2.4.6. SFRA shall maintain the Land Use Controls in accordance with the requirements of the CRUP(s) and Deed(s).

Formatted: Font: Not Bold

2.7.6 Institutional Controls

SFRA shall maintain and enforce all institutional controls including deed restrictions as specified in the CRUP(s) and Deed(s) that are signed and recorded at the time of transfer of title.

2.8 Removal Action Work Plans and Implementation

During implementation of the remedy or following its completion, EPA, in consultation with DTSC and RWQCB, may determine that removal actions or additional remedial actions are necessary to address circumstances at the Property which pose a potential threat to human health or the environment. The characterization of the condition and remedial or removal activities will generally be conducted consistent with the ~~Responses to Unknown or Unexpected Conditions by Respondent(s) Plan~~ Unknown Condition Response Plan outlined in the Post-RACR and Pre-RACR RMPs. The ~~Responses to Unknown or Unexpected Conditions by Respondent(s) Plan~~ Unknown Condition Response Plan provides a process for evaluating and addressing the condition and provides a framework for deciding whether work ~~shall be done under the Remedial Action Work Plan or as a Removal Action~~ may continue under the guidance of the RMP or whether an Investigative Work Plan must be submitted for regulatory review.

Typically, any condition for which the ROD provided a remedy can be ~~done-addressed~~ as a continuation of the remedial work under the guidance of the RMP and any Unknown Condition that requires a CERCLA response will be ~~performed as a Removal Action~~ addressed as determined or approved by the regulatory agencies. The Respondent(s) shall provide ~~EPA the regulatory agencies~~ with sufficient information and/or data in any Work Plan to make such determinations. The remedial or removal actions performed should not be inconsistent with the long-term remedial actions proposed for the sites.

2.8.1 Time-Critical Removal Actions

In accordance with the AOC, within 30 calendar days after the Navy's issuance of any Action Memorandum for a Time-Critical Removal Action (TCRA), Respondent(s) shall submit to EPA for approval, with a copy to DTSC and RWQCB, a Time-Critical Removal Work Plan for performing the Removal Action described in any such Action. The Time-Critical Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by such Action Memorandum. Except as otherwise indicated by EPA, Respondent(s) shall prepare any adjustments to the QAPP and FSP as part of a Time-Critical Removal Work Plan. If EPA determines that it is appropriate, the Time-Critical Removal Work Plan shall also include contingency planning. Once

approved, the Time-Critical Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and shall be a requirement of this AOC, and Respondent(s) shall conduct the activities required by the approved Time-Critical Removal Work Plan. Respondent(s) shall not commence implementation of the Time-Critical Removal Work Plan developed hereunder until receiving written EPA approval, in consultation with DTSC and RWQCB. Time-critical removal actions should be completed within 6 months of the approval of the work plan.

2.8.2 Non-Time-Critical Removal Actions - Engineering Evaluation/Cost Analyses

Unless otherwise directed by EPA, within forty-five (45) days after EPA approval that an NTCRA is warranted, Respondent(s) shall submit to EPA and DTSC an Engineering Evaluation/Cost Analyses (EE/CA) Work Plan which includes, but is not limited to, procedures for the: collection of all data necessary to characterize the area subject to the Non-Time-Critical Removal Action (NTCRA); evaluation of risks; identification and analysis of Removal Action alternatives, and development of sufficient information to enable the selection of appropriate NTCRAs for area(s) of the Site, after consultation with EPA and DTSC. A schedule for development of the EE/CA shall be included in the EE/CA Work Plan, for EPA approval.

2.8.3 Non-Time-Critical Removal Actions – Design and Workplan

In the event that the Navy, with EPA approval, issues any Action Memoranda for NTCRAs relating to any area of the Site following Respondent's performance of an EE/CA relating to such area, Respondent(s) shall prepare the NTCRA Design in accordance with CERCLA, the NCP, this SOW, and relevant guidance. Within sixty (60) days after the Navy's issuance of such an Action Memorandum that EPA approves, after consultation with DTSC and RWQCB, Respondent(s) shall submit to EPA and the DTSC and RWQCB a work plan for the design of such NTCRA ("NTCRA Design Work Plan"). The NTCRA Design Work Plan shall provide for design of the NTCRA set forth in the Action Memorandum, and for the achievement of the Performance Standards and other requirements set forth in such Action Memorandum, this AOC, and the SOW. Upon approval by EPA, after consultation with DTSC and RWQCB, the NTCRA Design Work Plan shall be incorporated into and shall be a requirement of this AOC.

Unless EPA determines otherwise, the NTCRA Design Work Plan shall include plans and schedules for implementation of all NTCRA design and pre-design tasks identified in this SOW, including but not limited to plans and schedules for the completion of (A) a design sampling and analysis plan (including but not limited to a NTCRA Design QAPP) in accordance with Section VII (Quality Assurance, Sampling and Data Analysis)); (B) a Health and Safety Plan for field design activities; and (C) a Construction Quality Assurance Plan. The NTCRA Design Work Plan may also include (D) a treatability study; (E) a Pre-design Work Plan; (F) a preliminary design submittal; (G) an intermediate design submittal; and (H) a pre-final/final design submittal. Respondent(s) shall submit to EPA and the DTSC and RWQCB all schedules, plans, submittals and other deliverables required under the approved NTCRA Design Work Plan in accordance

with the approved schedule for review and approval pursuant to Section XIV of the Order (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondent(s) shall not commence further NTCRA Design activities at the area subject to the NTCRA prior to approval of the NTCRA Design Work Plan. If approved by EPA, after consultation with DTSC and RWQCB, Respondent(s) may prepare a Removal Action Work Plan in lieu of the components of the NTCRA Design and NTCRA Design Work Plan. In such cases, the Removal Action Work Plan must meet the substantive requirements of the NTCRA Design Work Plan and the NTCRA Design.

Within thirty (30) days after EPA's approval of Respondent's NTCRA Design, Respondent(s) shall submit to EPA and the DTSC a NTCRA Workplan. The NTCRA Workplan shall provide for implementation of the NTCRA set forth in the Action Memorandum and the approved NTCRA Design, and for the achievement of the Performance Standards and other requirements set forth in such Action Memorandum, approved NTCRA Design Workplan, this AOC, and the SOW.

2.8.4 Non-Time-Critical Removal Actions - Actions

Within sixty (60) days after EPA approval of Respondent's NTCRA Workplan for such area, Respondent(s) shall commence performance of all activities detailed in the NTCRA Workplan.

Respondent(s) shall conduct all activities in accordance with the schedule required by the NTCRA Work Plan and this SOW, including but not limited to (A) construction in accordance with specifications; (B) performance of Operation and Maintenance, if applicable; (C) performance of construction quality assurance project plans; (D) performance of sampling plans directed at measuring progress toward meeting performance standards; and (E) performance of contingency plans.

2.8.5 Progress Reports and Completion Reports for Removal Activities

Pollution Reports (POLREPS): The Respondent(s) shall prepare and submit Pollution Reports on each TCRA and NTCRA. Guidance for the content of POLREPS is available in Directive 9360.3-03, Superfund Removal Procedures, Removal Response Reporting: POLREP and OSC Reports, June 1994.

Removal Action Activity Report: The Report is similar to an On-Scene Coordinator Report and shall include a concise summaries of activities undertaken under CERCLA Response authority (Section 300.165 of the NCP). Within 90 calendar days from completion of any removal action, Respondent(s) shall prepare and submit a final report on each TCRA and NTCRA which summarizes the Removal activities undertaken, effectiveness of the removal activity, problems encountered and lessons learned. Guidance for writing OSC Reports is available in Directive 9360.3-03, Superfund Removal Procedures, Removal Response Reporting: POLREP and OSC Reports, June 1994.

Summary of SOW Activities and Deliverables

Activity	Subtask	Schedule	Deliverables
1. Project Management	Scoping Meeting	Within 30 calendar days of AOC	Meeting Minutes
	Monthly Progress Reports	By 10 th of following month	Progress Reports
	Maintain Public Repository		
2. Community Involvement	Public Meetings	Within 30 calendar days of AOC	Community Relations Plan
	Fact Sheets		
3. RAWP	RA Work Plan(s)	Within 60 calendar days of AOC	Remedial Action Work Plan
	Dust Control Plan and Asbestos		
	Dust Mitigation Plan		
	HASP		
	QAPP		
	CQAP		
	SAP		
	Site Security Plan		
	O&M Plan Update		
	LUC RD Update		
	SWPPP		
4. Remedy Implementation	Remedy Construction	At time of any transfer	Deeds, CRUPs, etc.
	LUC Implementation		
5. Remedial Action Closeout Report	Pre-Final Construction Inspection	Within 60 calendar days of completion of Remedial Activities	
	Final Construction Inspection		
	RACR		RACR
6. <u>6. Performance Monitoring and Long-Term Obligations</u>			O&M Data
<u>O&M/Performance Monitoring</u>			Annual Progress Reports
			<u>5 Year Report Reviews</u>
7. 5-Year Review Report			Final 5-Y Formatted: Bullets and Numbering

8.7. Removal Action Work Plan(s) and Implementation	TCRA	TCRA Work Plan	Formatted: Bullets and Numbering
	NTCRA	EE/CA NTCRA Design NTCRA Work Plan POLREP(s) OSC Report(s)	

Acronyms Used in this SOW

AOC	Administrative Order on Consent
ARAR	Applicable or Relevant and Appropriate Requirement
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CIP	Community Involvement Plan
CSM	Conceptual Site Model
CQAP	Construction Quality Assurance Plan
DTSC	Department of Toxics Substances Control
DQO	Data Quality Objective
EE	Engineering Evaluation
EPA	United States Environmental Protection Agency
ETCA	Early Transfer Cooperative Agreement
FFA	Federal Facilities Agreement
FSP	Field Sampling Plan
HSP	Health and Safety Plan
IC	Institutional Control
NCP	National Contingency Plan or National Oil and Hazardous Substances Pollution Contingency Plan
NTCRA	Non-Time-Critical Removal Action
O&M	Operations and Maintenance
OSC	On-Scene Coordinator
PCBs	Polychlorinated biphenyls
POLREP	Pollution Report
PP	Proposed Plan
PSVP	Performance System Verification Plan
QA	Quality Assurance
QAPP	Quality and Assurance Project Plan
QC	Quality Control
RA	Remedial Action
RACR	Remedial Action Completion Report
RAO	Remedial Action Objective
RAWP	Remedial Action Work Plan
RD	Remedial Design
ROD	Record of Decision
RI	Remedial Investigation

City/Lennar Redline 4/22/11
(previously edited on 2/7/2011)

RWQCB **Regional Water Quality Control Board**
SAP **Sampling and Analysis Plan**
SOW **Statement of Work**
SWPPP **Storm Water Pollution Prevention Plan**
TCRA **Time-Critical Removal Action**

TABLE 1
REMEDIAL ACTIVITIES REQUIRED BY THE CERCLA RODS

Parcel	Remedial Action	Description
B	Soil Vapor Extraction	Operate SVE system at Building 123
B	Groundwater Treatment	Inject polylactate at IR Site 10 VOC plume
B and G	Covers	Install covers over all areas; various cover types (soil, asphalt, buildings, etc)
B	Shoreline Revetment	Construct revetment
B and G	Control of Soil Gas	Install and maintain vapor <u>intrusion</u> mitigation systems
B and G	Long-Term Obligations	Monitor groundwater in accordance with the RAMPs
		Conduct O&M activities in accordance with the O&M plans Plans
		Implement and enforce ICs in accordance with the LUC RDs LUCs
		Prepare and submit 5-year review reports

Refer to the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD) for the specific locations of these areas and for the RAMPs, LUC RDs, and O&M plans.

City Team Comments 4/22/11

Navy Comments 2/7/11

HPS.AOC#4.0.doc

EPA response 1/7/11

IN THE MATTER OF
FORMER HUNTER'S POINT NAVAL SHIPYARD

Respondents

San Francisco Redevelopment Agency and CP/HPS Development Co., LP

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP OF PORTIONS OF
THE FORMER HUNTER'S POINT NAVAL SHIPYARD
U.S. EPA Region 9

CERCLA Docket No. 2010-14
Proceeding under Sections 104, 106 and 122 of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606, and 9622.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

LEGAL_US_W # 67794178.2

TABLE OF CONTENTS

I.	JURISDICTION.....	1
II.	PARTIES BOUND	2
III.	STATEMENT OF PURPOSE	3
IV.	DEFINITIONS	4
V.	FINDINGS OF FACT	11
VI.	CONCLUSIONS OF LAW AND DETERMINATIONS	11
VII.	ADMINISTRATIVE ORDER	12
VIII.	GENERAL PROVISIONS	12
IX.	PERFORMANCE OF THE WORK BY RESPONDENTS.....	13
X.	REMEDY REVIEW.....	16
XI.	QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS	17
XII.	ACCESS AND LAND USE CONTROLS.....	18
XIII.	REPORTING REQUIREMENTS	20
XIV.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS.....	22
XV.	PROJECT COORDINATORS	23
XVI.	ASSURANCE OF ABILITY TO COMPLETE WORK.....	24
XVII.	CERTIFICATION OF COMPLETION	24
XVIII.	EMERGENCY RESPONSE	26
XIX.	PAYMENTS FOR RESPONSE COSTS	27
XX.	INDEMNIFICATION AND INSURANCE.....	30
XXI.	FORCE MAJEURE.....	32
XXII.	EPA, DTSC AND RWQCB DISPUTE PROCESS	33
XXIII.	DISPUTE RESOLUTION	34
XXIV.	STIPULATED PENALTIES.....	35
XXV.	COVENANT NOT TO SUE BY EPA.....	38
XXVI.	RESERVATIONS OF RIGHTS BY EPA.....	38
XXVII.	DTSC AND RWQCB COVENANT NOT TO SUE	39
XXVIII.	DTSC AND RWQCB RESERVATIONS OF RIGHTS	39
XXIX.	COVENANTS BY RESPONDENTS	40
XXX.	OTHER CLAIMS	41
XXXI.	CONTRIBUTION	41
XXXII.	NONCOMPLIANCE, STOP WORK, AND DEFAULT DETERMINATIONS	42
XXXIII.	ACCESS TO INFORMATION.....	43
XXXIV.	RETENTION OF RECORDS	44
XXXV.	NOTICES AND SUBMISSIONS	44
XXXVI.	APPENDICES.....	46
XXXVII.	COMMUNITY RELATIONS	46
XXXVIII.	MODIFICATIONS.....	46
XXXIX.	TERMINATION	47
XL.	EFFECTIVE DATE	47

Formatted: zzmpTrailerItem

Confidential

I. JURISDICTION

1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), the California Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB”), and the San Francisco Redevelopment Agency (“SFRA”) and CP/HPS Development Co. LP (referred to individually as “Respondent” and collectively as “Respondents”). The Order concerns the performance of one or more remedial actions (“RD/RA”) for certain hazardous substances, pollutants, or contaminants present on Parcels G, and portions of Parcel B at the former Hunter’s Point Naval Shipyard (“HPNS”) located at San Francisco (“Site”), described in Appendix A and depicted generally on the map attached as Appendix B) and the reimbursement for future response costs incurred by EPA, DTSC and RWQCB in connection with such CERCLA response actions.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606 and 9622 (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14 14 C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Superfund Branch Chief (now referred to as Assistant Division Director) by Regional Delegation R9 1290.15, dated September 29, 1997. DTSC and the RWQCB sign this Order pursuant to relevant provisions of CERCLA Section 120 regarding state participation in federal facility cleanups, and Section 121(f), 42 U.S.C. §§ 9620 and 9621(f), and applicable provisions of 40 C.F.R. Subpart F, and the California Health and Safety Code, Division 20, Chapters 6.5, 6.67, 6.75, and 6.8, and the California Water Code, Division 7. The United States Department of Justice is approving and signing this Order pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. Pursuant to that certain Early Transfer Cooperative Agreement (“ETCA”) Covering Portions of the Hunters Point Naval Shipyard Between the United States of America Department of the Navy (“Navy”) and the SFRA dated ____, and pursuant to that certain Remediation Agreement dated ____ between the SFRA and CPHPS Development Co., Respondents have agreed to undertake the cleanup of Parcel B and a portion of Parcel G at the former Hunter’s Point Naval Shipyard, which is more specifically depicted in Appendix A to this Order. This cleanup is currently being undertaken by the U.S. Navy pursuant to the terms of the Hunter’s Point Naval Shipyard Federal Facilities Agreement, dated January 22, 1992 (“FFA”). The FFA is being amended to provide in general that the obligations of the Navy to conduct that portion of the cleanup of Parcel B and a portion of Parcel G at the former Hunter’s Point Naval Shipyard that SFRA has agreed to perform under the ETCA and this Order and any Operations and Maintenance Agreement (“O&M Agreement”) entered into by DTSC and the Respondents that supersedes the O&M provisions of this Order as provided in Paragraph 6 below will be suspended so long as the Respondents comply with all requirements of this Order and other conditions described in the Amended FFA are met. In the event that EPA, in consultation with DTSC and RWQCB, determines that the Respondents are in Default as defined in Section XXXII of this Order or the O&M Agreement entered into by DTSC and the Respondents, the

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

responsibility for any remaining response actions shall revert to the Navy in accordance with the terms and conditions of the Amended FFA.

4. Respondents represent that they are each bona fide prospective purchasers ("BFPP") with respect to the Site as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that they have and will continue to comply with section 101(40) during their ownership of the Site, and thus qualify for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Site. In view, however, of the complex nature and significant extent of the Work to be performed by Respondents at the Site, and the risk of claims under CERCLA being asserted against Respondents notwithstanding section 107(r)(1) as a consequence of Respondents' activities at the Site pursuant to this Order, one of the purposes of this Order is to resolve, subject to the reservations and limitations contained in Section XXVI (Reservations of Rights by EPA), any potential liability of Respondents under CERCLA for Existing Contamination, as defined in Paragraph 13 below.

5. EPA, DTSC, RWQCB and Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Fact, and Conclusions of Law and Determinations in Sections V and VI of this Order. Respondents agree to comply with and be bound by the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms.

6. The O&M provisions of this Order may be superseded by an Operations and Maintenance Agreement ("O&M Agreement") entered into by Respondents and DTSC to address Long-Term Obligations if: (a) it has been concurred upon by EPA, (b) the Navy has been provided an opportunity to review and comment upon it in draft form, and (c) the O&M Agreement is in the form attached to this Order as Exhibit xx ((Navy Note: This is a reference to DTSC's model O&M Agreement previously distributed by DTSC)) and includes but is not limited to: (i) identical definitions, scope of work, and terms and conditions relating to ~~O&M requirements~~ Long-Term Obligations consistent with those as set forth in this Order and the ETCA and (ii) equivalent procedures and criteria as set forth in this Order for addressing non-compliance and default determinations.

II. PARTIES BOUND

7. This Order applies to and is binding upon EPA, DTSC, RWQCB and upon Respondents and their successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this Order, except as provided in Paragraph 20.

8. Each Respondent shall be responsible for carrying out the activities required of it by the Statement of Work and this Order in a timely manner and shall be subject to stipulated penalties for its failure to meet the terms and conditions of this Order. A Respondent may be held responsible for carrying out activities required of the other Respondent under the Statement

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

of Work and this Order, but only after EPA, DTSC and RWQCB have exhausted their remedies under this Order against the non-performing Respondent; except that a Respondent shall respond immediately where EPA determines, in consultation with DTSC and RWQCB, that an immediate response is required to protect human health and the environment. Where this Order specifies that Respondents have a right or duty, but does not specify which respondent has that right, or duty, the Respondents may designate a single Respondent to exercise that right or perform that duty.

9. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order by their contractors, subcontractors and representatives.

10. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondents to this Order.

III. STATEMENT OF PURPOSE

11. In entering into this Order, the objectives of EPA, DTSC, RWQCB and Respondents, in addition to the purpose identified in Paragraph 4 above, are: (a) to perform Environmental Services and other activities required under this Order including but not limited to the construction and implementation of the selected remedial actions consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), including ~~the obligation to implement and maintain institutional controls, including land use covenants, or operation and maintenance at the Site~~ Long-Term Obligations to achieve all applicable or relevant and appropriate requirements not waived ("ARARs"), and other Remedial Action Objectives described in the RODs; (b) to provide for the payment of response and oversight costs incurred by EPA, DTSC and RWQCB with respect to this Order, provided that neither EPA, DTSC, nor the RWQCB will seek reimbursement from Respondents for any response and oversight costs already paid to them from a Department of Defense funding source; and (c) to fulfill a portion of the required assurances under the CERCLA 120(h)(3)(C) covenant deferral process.

12. The Work conducted under this Order is subject to approval by EPA, after consultation with DTSC, RWQCB, and the Navy. For purposes of this Order, consultation with DTSC, RWQCB, and the Navy shall include, but not be limited to, simultaneous receipt by and a reasonable opportunity to review and comment on by DTSC, RWQCB, and the Navy of all documents and deliverables required to be submitted by Respondents under this Order (the reasonable review time for each document/deliverable will be determined by EPA in consultation with DTSC and the RWQCB before or upon receipt of the document/deliverable; opportunity to participate in all meetings among the Parties concerning the Site; and to participate in dispute resolution as provided by Sections XXII and XXIII of this Order. Respondents shall conduct all Work under this Order in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures and applicable State law.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

IV. DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Area Covered by Environmental Services” or “ACES” shall mean that area identified on the map in Exhibit xx, and specifically excludes IR Sites 7/18 and the ***radiologically-impacted area around Building 140***.

“Amended FFA” shall mean Amendment No. 1 to the Hunter’s Point Naval Shipyard Federal Facilities Agreement, dated _____.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“Certification of Completion of Remedial Action” shall mean a certification issued for a ROD Implementation Area after approval of a RACR pursuant to Paragraph 53.c or a certification for the entire Site issued pursuant to Paragraph 53.d.

“Covenant Deferral Request” shall mean the document prepared in accordance with CERCLA Section 120(h)(3)(C), which provides the basis for the deferral by EPA, with the concurrence of the State, of the CERCLA covenant with respect to the Site.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Order, where the last calendar day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next working day.

“DTSC” shall mean the Department of Toxic Substances Control and any successor departments or agencies of the State.

“DTSC Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that DTSC incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, costs to ~~or implement institutional controls, including land use covenants, or operation and maintenance, Long-Term Obligations~~ including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement ~~institutional controls~~ **Long-Term Obligations** including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by DTSC in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order.

“Effective Date” shall be the effective date of this Order as provided in Section XXXX.

Confidential

“Environmental Condition(s)” means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:

- (a) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 *et seq.*;
- (b) Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 *et seq.*;
- (c) California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 *et seq.*);
- (d) California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 *et seq.*);
- (e) Porter-Cologne Water Quality Control Act (California Water Code §13000 *et seq.*);
- (f) Or similar federal or state environmental law.

“Environmental Services” ~~[COPY FINAL VERSION FROM ETCA] shall mean the performance of the activities necessary to achieve Regulatory Closure and comply with Long-Term Obligations including but not limited to those required to comply with the RODs and associated Remedial Design reports and CERCLA, consistent with the NCP, with respect to (i) Known Conditions and Unknown Conditions Discovered During the Course of Remediation even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation, but only to the extent such activities are covered by the Environmental Insurance Policies or to the extent such funding is unavailable as a result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.~~

The term “Environmental Services” does not include, except as specifically provided herein, the performance of any activities related to Navy Retained Conditions; or Special Exclusions.

“Environmental Insurance Policies” shall mean the environmental insurance which Respondents shall procure in accordance with the ETCA.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“EPA Future Response Costs” shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of establishing and

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

maintaining the administrative record for this Order, or participating in community relations meetings, the costs incurred pursuant to Section XII (Access and ~~Institutional-Land Use Controls~~), including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement ~~institutional controls-Land Use Controls~~ including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by EPA in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order.

“ETCA” shall mean the Early Transfer Cooperative Agreement entered into by the Navy and the San Francisco Redevelopment Authority, San Francisco, California for the Site, dated ____, and attached hereto as Exhibit ____.

“Existing Contamination” shall mean:

- 1) any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the Effective Date;
- 2) any hazardous substances, pollutants or contaminants that migrated from the Site prior to the Effective Date; and
- 3) any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

Existing Contamination includes, but is not limited to, Navy-Retained Conditions.

“FFA” or “Amended FFA” shall mean the Hunter’s Point Naval Shipyard Federal Facilities Agreement, dated January 22, 1992, and any amendments thereto.

“Further Response Actions” means any removal or remedial action selected by the Navy and/or EPA which addresses Environmental Conditions not specifically addressed in the CERCLA RODs but which are within the definition of Environmental Services and are not Navy Retained Conditions or Special Exclusions.

“Hunter’s Point Special Account” shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Institutional Controls” ~~[COPY FINAL VERSION FROM ETCA] shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and~~

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

~~covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.~~

“Known Condition” shall mean one or more specified chemicals of concern in a specified medium (e.g., soil, soil gas, or groundwater) identified in the CERCLA RODs as requiring remedial action.

“Land Use Controls” or “LUCs” [COPY FINAL VERSION FROM ETCA]

~~“Long Term Obligations” [COPY FINAL VERSION FROM ETCA] shall mean any long term review, monitoring, reporting and institutional control (“IC”) and operation and maintenance requirements that are required to be performed subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action that has been approved pursuant to this Order or a related Operations and Maintenance Agreement with DTSC including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports, and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy’s preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five year reviews thereafter. Long Term Obligations does not include obligations attributable to NRCs or Special Exclusions.~~

Formatted: Body Text, Left, Indent: First line: 0"

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Navy Retained Conditions shall mean Unexploded Ordnance (as defined in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of the ETCA.

~~“Operation and Maintenance” or “O&M” [COPY FINAL VERSION FROM ETCA] shall mean all activities required to maintain the effectiveness of the Remedial Action(s) as required by EPA, in consultation with DTSC and RWQCB, pursuant to this Order or any O&M Agreement between DTSC and Respondents that supersedes the Order subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action.~~

~~“Operation and Maintenance Agreement” or “O&M Agreement” [COPY FINAL VERSION FROM ETCA] shall mean any Operations and Maintenance Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of this Order.~~

“Operation and Maintenance Plan” [COPY FINAL VERSION FROM ETCA]

“Order” shall mean this Administrative Order on Consent, the SOW, all appendices attached hereto (listed in Section XXXVI) and all documents incorporated by reference into this document, including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

Formatted: Font: (Default) Times

Formatted: definition01, Space After: 6 pt, Tab stops: -1", Left + -0.5", Left + 0", Left + 0.5", Left + 1", Left + 1.5", Left + 2", Left + 2.5", Left + 3", Left + 3.5", Left + 4", Left + 4.5", Left + 5", Left + 5.5", Left + 6", Left + 6.5", Left

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper case letter.

“Parties” shall mean EPA, DTSC, RWQCB and Respondents.

“Pollution Conditions” shall have the meaning set forth in the Environmental Insurance Policies.

“RACR” shall mean a report prepared pursuant to the *DoD/EPA Joint Guidance, Remedial Streamlined Site Closeout and NPL Deletion Process for DoD Facilities* demonstrating that (1) the remedy at a ROD Implementation Area has been fully performed, including recordation of a modification to the LUC(s), if required by EPA; (2) initial implementation of any other institutional controls called for in the ROD, and (3) the Remedial Action Objectives have been attained.

“Radiological Materials” shall mean solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy’s work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term “Radiological Materials” does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides other than being handled as household hazardous waste.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Record of Decision(s)” or “ROD(s)” shall mean that certain CERCLA Amended Record of Decision for Parcel B dated January 14, 2009 and that certain CERCLA Record of Decision for Parcel G dated February 18, 2009 including all attachments thereto. The term “Record of Decision(s)” or “ROD(s)” shall not include any amendment, modification or supplement to the above-referenced Records of Decision except to the extent required as the result of any negligent act or omission of Respondents or their contractors.

“Regulatory Closure” shall mean Environmental Regulatory Agency approval by issuance of one or more Certifications of Completion for CERCLA response actions that collectively address the entire ACES (or encompassing the portion of the ACES or particular condition with respect to which the term is used) pursuant to the procedures set forth in the AOC and, to the extent the Environmental Services includes activities not covered by the AOC, such as certain petroleum releases, written Environmental Regulatory Agency approval that no further action is required for that condition.

“Regulatory Enforcement Activities” shall mean any regulatory enforcement costs that are not allowable costs under 10 U.S.C. 2701(d)(3), including activities associated with EPA, DTSC, RWQCB, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking or preparing to take judicial enforcement actions against the SFRA, or its

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

“Regulatory Oversight” includes all activities performed by EPA, DTSC, and RWQCB necessary to oversee the implementation of the AOC, other than Regulatory Enforcement Activities.

~~“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Respondents to implement each of the RODs in accordance with the SOW and the Remedial Design and Remedial Action Work Plans and other plans approved by EPA, after consultation with DTSC and RWQCB.~~

“Remedial Action Completion Report” or “RACR” [COPY FINAL VERSION FROM ETCA]

“Remedial Action Objective” shall mean the numeric or narrative clean-up standard specifically designated in a ROD as the “remedial action objective” for a particular remedy selected in the ROD.

“Remedial Action Work Plan” shall mean the document(s) developed pursuant to Paragraph ~~22-29~~ of this Order and approved or modified by EPA, after consultation with DTSC and RWQCB, and any amendments thereto.

“Remedial Design Package Report(s)” [COPY FINAL VERSION FROM ETCA]

~~“Remedial Designs” shall mean that certain Remedial Design for Parcel B dated ____ and that certain Remedial Design for Parcel G dated ____.~~

“Remedy Failure” shall mean any circumstance, not due to negligence by SFRA, where a remedy selected in the CERCLA RODs or subsequent CERCLA decision document issued by the Navy has been implemented by SFRA in accordance with the CERCLA decision document and approved remedial/removal design documents but is determined by EPA not to have achieved the CERCLA decision document’s remedial/removal action objectives.

“Risk Management Plans” or “RMPs” shall mean that certain Pre-RACR Risk Management Plan dated ___, and that certain Post-RACR Risk Management Plan dated ___, and any subsequent amendments thereto.

“ROD Implementation Area” shall mean the portions of Parcels B and G identified in Exhibit ___, attached hereto, as that Exhibit may be amended from time to time with the approval of EPA, in consultation with DTSC and the RWQCB, which form the geographic units for which Respondents will seek certification of completion pursuant to Section XVII.

“RWQCB” shall mean the Regional Water Quality Control Board, San Francisco Bay Region, and any successor agencies of the State.

“RWQCB Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the RWQCB incurs in reviewing or developing plans, reports and

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure costs to establish or implement ~~institutional controls~~ Long-Term Obligations including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by the RWQCB in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean that portion of the Hunter’s Point Naval Shipyard Superfund Site which Respondents have agreed to remediate in accordance with this Order, encompassing approximately 80 acres, described in Appendix A and depicted generally on the map attached as Appendix B. The scope of the “Site” shall be the same as the “Area Covered by Environmental Services” as that term is defined in the ETCA.

“Special Exclusions” means any of the following:

(a) Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and G CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

- 1) The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;
- 2) Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs b through e of this Section;

(b) Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.

(c) Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(d) The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.

(e) Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

“State” shall mean the State of California.

“State Interest” shall mean the interest rate applied to outstanding payments for costs billed pursuant to California Health and Safety Code section 25360.1. The rate of interest is subject to change.

“Statement of Work” or “SOW” shall mean the statement of work required of each Respondent for implementation of one or more Remedial Design(s) and Remedial Action(s) the Site, as set forth in Appendix C to this Order and any modifications made in accordance with this Order. The Statement of Work shall identify, for each element of Work, which Respondent is responsible for performing that element.

“Supervising Contractor” shall mean the principal contractor retained by the Respondents to supervise and direct the implementation of the Work under this Order.

“Unknown Conditions Discovered During the Course of Remediation” shall mean Environmental Conditions that are discovered in the course of implementing the requirements of the CERCLA RODs in a portion of the Site that has not achieved Regulatory Closure, and are not Known Conditions, Special Exclusions, or Navy Retained Conditions.

“Unknown Conditions Discovered Outside the Course of Remediation” shall mean Environmental Conditions other than Known Conditions and Unknown Conditions Discovered During the Course of Remediation.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous waste” under California Health and Safety Code section 25117, or “hazardous substance” under California Health and Safety Code section 25316; and (5) any “waste” under California Water Code section 13050.

“Work” shall mean performance of Environmental Services and all activities Respondents are required to perform under this Order, except those required by Section XXXV (Retention of Records). Work includes, but is not limited to, implementation and Operation and Maintenance of the remedies selected in the Amended Parcel B ROD and the Parcel G ROD.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

V. FINDINGS OF FACT

14. Hazardous substances that have been released or that have the potential to be released within the Site include, but may not be limited to, metals, volatile organic compounds (VOC), semivolatile organic compounds (SVOC), pesticides, polychlorinated biphenyls (PCB), and radionuclides. Concentrations of a group of metals, especially arsenic and manganese, consistently exceeded remediation goals at locations across Parcels B and G. These ubiquitous metals are addressed by eliminating the exposure pathway with a cover. Groundwater contaminants which include VOCs, especially trichloroethene (TCE) and its degradation product vinyl chloride, pose a risk from exposure via vapor intrusion into buildings.

On January 22, 1992, the EPA, State of California Department of Health Services (“DHS”) (now DTSC), and the Navy entered into a Federal Facilities Agreement requiring the Navy to identify, perform and complete all necessary response actions, including operation and maintenance at the former Hunter’s Point Naval shipyard under CERCLA.

The Site contains 16 known Installation Restoration Program sites (“IRP sites”). The Navy has signed a Record of Decision and an Amended Record of Decision to select a remedy for the IRP sites.

The former Hunter’s Point Naval Shipyard was selected in 1992 for Base Realignment and Closure and was officially closed in 1974.

The SFRA has requested an early transfer of the Site, which it has or will acquire, upon EPA’s approval of and the State’s concurrence on the Covenant Deferral Request. All of the response actions undertaken by Respondents shall be performed under this AOC, as determined by EPA, with DTSC and RWQCB concurrence, pursuant to CERCLA and the NCP.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting this Order, EPA has determined that:

(a) The former Hunter’s Point Naval Shipyard is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

(b) The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Waste Materials as defined in Section IV of this Order.

(c) Respondents are each “persons” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

(d) The conditions described in Paragraph 14 above constitute an actual or threatened release of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or a release of Waste Material, as defined in Section IV of this Order.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(e) The response actions required by this Order are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. ADMINISTRATIVE ORDER

16. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondents shall comply with the provisions of this Order, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VIII. GENERAL PROVISIONS

17. Commitments by Respondents.

Respondents shall ~~finance, through the funds provided by the Navy pursuant to the ETCA any proceeds from the Environmental Insurance Policies, and Respondents' SFRA's funds for Known Conditions and Unknown Conditions Discovered in the Course of Remediation to the extent not covered by ETCA funds and insurance proceeds, and shall~~ perform the Work in accordance with this Order and any O&M Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of the Order, the SOW, the Records of Decision, and other decision documents applicable to the Site and associated with the Records of Decision, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Respondents and approved by EPA, in consultation with DTSC and RWQCB, pursuant to this Order and any subsequent O&M Agreement. Respondents shall also reimburse EPA, DTSC and RWQCB for their respective Future Response Costs as provided in this Order.

18. Compliance with Applicable Law.

All activities undertaken by the Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of federal and state environmental laws as set forth in the ROD(s) and the SOW. The activities conducted pursuant to this Order, if approved by EPA, shall be considered to be consistent with the NCP.

19. Permits.

(a) As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work) and where such remedial action is selected and carried out in compliance with Section 121 of CERCLA. Where any portion of the Work that is not on Site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits and approvals.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(b) The Respondents may seek relief under the provisions of Section XXI (Force Majeure) of this Order for any delay in the performance of the Work resulting from a failure to obtain, or delay in obtaining, any permit required for the Work.

(c) This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

20. Conveyance of Site.

(a) At least 30 days prior to the conveyance of a fee interest or leasehold interests in excess of 20 years to any portion of the Site. Respondents shall give written notice to EPA, DTSC, and RWQCB of the proposed conveyance, including the name and address of the grantee. Nothing in this Order shall be construed to require Respondents to secure the approval of EPA, DTSC, or RWQCB before transferring such interest.

(b) In the event of any such conveyance, Respondent's obligations under this Order shall be unaffected unless EPA, in consultation with DTSC and RWQCB, approves the transfer of the obligations of Respondents under this Order to a successor. EPA's decision under this Paragraph 20.b. is in its sole discretion and shall not be subject to dispute resolution or judicial review. EPA will consider the following criteria, among others, in approving or disapproving a proposed successor for the Work under this Order: (i) the technical qualifications of the successor, or its proposed consultant, to perform remaining Work obligations; (ii) financial ability to perform such obligations; (iii) the successor's legal status and legal authority to sign the Order; (iv) the proposed successor's willingness to sign the Order without modification; and (v) assurance that the proposed transfer of Work obligations will not hinder or delay completion of the Work. If EPA, in consultation with DTSC and RWQCB approve a successor for the Work under this Order, EPA, DTSC, and RWQCB may also provide covenants not to sue for the successor similar to those provided in Paragraphs ~~87-86~~ and ~~90-89~~ of this Order.

IX. PERFORMANCE OF THE WORK BY RESPONDENTS

21. Selection of Supervising Contractor.

(a) All aspects of the Work to be performed by the Respondents pursuant to Sections IX (Performance of the Work by Respondents), X (Remedy Review), XI (Quality Assurance, Sampling and Data Analysis), and XVIII (Emergency Response) of this Order shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after consultation with DTSC and RWQCB. Respondent ***CP/HPS Development Company has proposed to use MACTEC as its Supervising Contractor and provided EPA, DTSC and RWQCB with the information meeting the criteria described in subparagraph b. below, including its qualifications and Quality Management Plans.*** MACTEC is not disapproved. NOTE: **MACTEC to submit necessary information for review.**

(b) If at any time in the future, Respondents propose to change its Supervising Contractor, Respondents shall notify EPA, DTSC, RWQCB, and the Navy in writing at least sixty (60) days in advance of such change, and must obtain an authorization to proceed from EPA, after consultation with DTSC, RWQCB, and the Navy, before the new Supervising Contractor performs, directs, or supervises any Work under this Order. Respondents must

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

provide the name, title, and qualifications of any contractor proposed to be Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/241/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA, after consultation with DTSC, RWQCB, and the Navy, will issue a notice of disapproval or an authorization to proceed.

(c) If EPA disapproves a proposed Supervising Contractor, EPA will notify Respondents in writing. Respondents shall submit to EPA, DTSC and RWQCB a list of contractors, including the qualifications of each contractor that would be acceptable to them, within 30 days of receipt of EPA's disapproval of the contractor previously proposed. After consultation with DTSC and RWQCB, EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondents may select any contractor from that list that is not disapproved and shall notify EPA, DTSC and RWQCB of the name of the contractor selected within 21 days of EPA's authorization to proceed.

(d) If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Respondents from meeting one or more deadlines in a plan approved by the EPA pursuant to this Order, Respondents may seek relief under the provisions of Section XXI (Force Majeure).

22. Remedial Action. With respect to each remedial action, the following procedures and requirements shall apply:

(a) Within [REDACTED] days of the Effective Date of this Order, Respondents shall submit to EPA, DTSC RWQCB, and the Navy a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the relevant ROD and achievement of the Remedial Action Objectives, in accordance with the ROD, this Order, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA after consultation with DTSC, RWQCB, and the Navy. If the EPA's lead Remedial Project Manager approves a Remedial Action Work Plan and the Navy disapproves that work plan, the EPA Region IX Director of Federal Facilities shall make the final determination regarding whether to approve or disapprove the RAWP. Upon its final approval, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order. At the same time as the Remedial Action Work Plan is submitted, Respondents shall submit to EPA, DTSC and RWQCB a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to, 29 C.F.R. § 1910.120.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(b) The Remedial Action Work Plan shall include the following which among other things shall provide for the complete initial installation of surface cover for all portions of the site for which RODs require a surface cover remedy no later than seven years after the Effective Date of this order: (1) schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) methods for satisfying permitting requirements (4) methodology for implementation of the Operation and Maintenance Plan; (5) methodology for implementation of the Contingency Plan; (6) tentative formulation of the Remedial Action team; (7) construction quality control plan (by constructor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Respondents' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

(c) Upon final approval of the Remedial Action Work Plan, Respondents shall implement the activities required under the Remedial Action Work Plan. The Respondents shall submit to EPA, DTSC, RWQCB, and the Navy all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondents shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

23. The Respondents shall continue to implement the Remedial Action and Operation and Maintenance, and Long-Term Obligations, until the Remedial Action Objectives are achieved and for so long thereafter as is otherwise required under this Order and any O&M Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of the Order and the ROD.

24. Respondents acknowledge and agree that nothing in this Order, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by EPA, DTSC or RWQCB that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Remedial Action Objectives.

25. Except as expressly provided in the SOW (NOTE to allow for revetment wall work) Respondents are not required to perform any Work under this Order on any property that is outside the boundaries of the Site or any Work associated with release of hazardous substances that have migrated onto, under or in the Site from a source outside the Site subsequent to the Effective Date of this AOC.

26. Waste Shipments.

(a) For any Work performed under this Order, Respondents shall comply with all applicable State waste management laws.

(b) For any Work performed under this Order, Respondents shall, prior to any shipment of Waste Material from the Site to an out-of-state waste management facility, provide

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

written notification to the appropriate state environmental official in the receiving facility's state and to the EPA, DTSC and RWQCB Project Coordinators of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments to out-of-state waste management facilities when the total volume of all such shipments will not exceed 10 cubic yards.

(c) The Respondents shall include in the written notification for out-of-state waste shipments the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(d) The identity of the receiving facility and state will be determined by the Respondents following the award of the contract for Removal Action or Remedial Action construction. The Respondents shall provide the information required by Paragraph 24.c. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

27. Off-Site Waste Shipments. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. If the off-Site location is in California, Respondents shall obtain certification from the State that the proposed receiving facility is in substantial compliance with California laws. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provisions and regulations cited in the preceding sentences.

X. REMEDY REVIEW

28. Periodic Review.

For the duration of this Order, Respondents shall conduct any studies and investigations as requested by EPA, after consultation with DTSC and RWQCB, in order to permit EPA and/or the Navy to conduct reviews of whether any Remedial Action(s) is(are) protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

29. Selection of Further Response Actions.

If EPA and the Navy determine, at any time, after consultation with DTSC and RWQCB, that any Remedial Action at the Site is not protective of human health and the environment, EPA and the Navy may select ~~further~~ ~~Further response~~ ~~Response actions~~ ~~Actions~~ for the Site in accordance with the requirements of the FFA and CERCLA and consistent with the NCP ("~~Further Response Actions~~").

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(a) Opportunity to Comment. For the duration of this Order, Respondents and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA and the Navy and to submit written comments for the record during the comment period.

(b) Limitations on Respondents's Obligation to Perform Further Response Actions. If EPA and the Navy select Further Response Actions for the Site, the Respondents shall have no obligation to undertake ~~such Further Response Actions~~ any additional actions unless the conditions ~~or actions~~ are within the definition of Environmental Services. Any requirement that Respondents undertake Further Response Actions shall be subject to Respondents' right to dispute resolution in accordance with Section XXIII.

(c) Submissions of Plans. If Respondents are required to perform further response actions pursuant to Paragraph 29.b., Respondents shall submit a plan for such work to EPA and the Navy for approval, in accordance with the procedures set forth in Section IX (Performance of the Work by Respondents) and shall implement the plan approved by EPA and the Navy, after consultation with DTSC and RWQCB, in accordance with the provisions of this Order.

XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

30. Respondents shall use quality assurance, quality control, and chain of custody procedures for all assessment, characterization, treatability, design, compliance and monitoring samples in accordance with "Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP)" (EPA/505/B-04-900A, March 2005), "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Order, Respondents shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and relevant guidance. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Order. Respondents shall ensure that EPA, DTSC and RWQCB personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA, DTSC or RWQCB pursuant to the QAPP for quality assurance monitoring. Respondents shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988 (collectively, "CLP-approved methods"), and any amendments made thereto during the course of the implementation of this Order; however, upon approval by EPA, after consultation with DTSC and RWQCB, the Respondents may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Respondents shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order participate

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

in an EPA or EPA-equivalent QA/QC program. Respondents shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA after consultation with DTSC and RWQCB. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

31. Upon request, the Respondents shall allow split or duplicate samples to be taken by EPA, DTSC or RWQCB or their authorized representatives. Respondents shall notify EPA, DTSC and RWQCB not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA, after consultation with DTSC and RWQCB. In addition, EPA, DTSC and RWQCB shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow the Respondents to take split or duplicate samples of any samples it takes as part of the EPA's oversight of the Respondents' implementation of the Work.

32. Respondents shall submit to EPA, DTSC and RWQCB two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Order unless EPA agrees otherwise, after consultation with DTSC and RWQCB.

33. Notwithstanding any provision of this Order, the United States and the State, including DTSC and RWQCB, hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XII. ACCESS AND ~~INSTITUTIONAL~~ LAND USE CONTROLS

34. As anticipated in the covenant deferral process, ~~certain restrictions on land/soil and groundwater use~~ Land Use Controls are required to assure protection of human health and the environment at the time of transfer of the Site, prior to and during the implementation of response actions at the Site. Accordingly, the Navy, EPA, DTSC and RWQCB have prepared, in consultation with Respondents, ~~land use covenants ("LUCs")~~ Covenants to Restrict Use of Property ("CRUPs") consistent with the requirements of the RODs for Parcels B and G, and Respondents have prepared, and EPA, the Navy, DTSC and RWQCB have approved the Risk Management Plans.

(a) Respondents shall comply with the use restrictions set forth in the LUCs except to the extent Respondents obtain the approval of Navy, DTSC, EPA and RWQCB to allow an otherwise restricted use or activity pursuant to the approval procedures set forth in the LUCs or Risk Management Plans, respectively.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(b) Respondents shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of remedial measures and response actions to be performed pursuant to this Order and/or in accordance with the RODs.

35. Respondents shall provide the United States, including EPA and the Navy, and DTSC and RWQCB, and their representatives and contractors, with access at all reasonable times to the Site, for the purpose of conducting any activity related to this Order including, but not limited to, the following activities:

- 1) Monitoring the Work;
- 2) Verifying any data or information submitted to EPA, DTSC and RWQCB;
- 3) Conducting investigations relating to contamination at or near the Site;
- 4) Obtaining samples;
- 5) Assessing the need for planning or implementing response actions or additional response actions at or near the Site;
- 6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- 7) Implementing any response actions or the Work in the event of Default by Respondents;
- 8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Respondents or its agents, consistent with Section XXXIII (Access to Information);
- 9) Assessing Respondents' compliance with this Order; and
- 10) Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by, or pursuant to this Order.

36. If EPA determines, after consultation with DTSC and RWQCB, that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement any remedies selected in the RODs, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondents shall cooperate with EPA's efforts to secure such governmental controls.

37. Notwithstanding any provision of this Order, the United States and the State, including DTSC and RWQCB, retain all of their access authorities and rights, as well as all of

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XIII. REPORTING REQUIREMENTS

38. In addition to any other requirement of this Order, Respondents shall submit an electronic copy of monthly progress reports to EPA, DTSC and RWQCB that: (a) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Respondents or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Order completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Respondents has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Respondents shall submit these progress reports to EPA, DTSC and RWQCB by the tenth day of every month following the Effective Date of this Order until EPA notifies the Respondents pursuant to Section XVII (Certification of Completion). If requested by EPA, DTSC or RWQCB, Respondents shall also provide briefings for EPA, DTSC and RWQCB to discuss the progress of the Work.

39. The Respondents shall notify EPA, DTSC and RWQCB of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

40. Upon the occurrence of any event during performance of the Work that is required to be reported pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), the Respondent owning the property where the event occurred shall within 24 hours of the onset of such event orally notify the EPA, DTSC and RWQCB Project Coordinators or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 9, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

41. Within 20 days of the onset of such an event, the Respondent owning the property where the event occurred shall furnish to EPA, DTSC and RWQCB a written report, signed by that Respondent's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, that Respondent shall submit a report setting forth all actions taken in response thereto.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

42. Discovery of ~~Unknown-Unexpected~~ Environmental Condition.

(a) If Respondent, or its contractors discover or receive actual notice of an ~~Unknown~~ Environmental Condition during the conduct of the remedial action, other than an event or condition covered by the requirements of Paragraph ~~56-55~~ (Emergency Response), including but not limited to physical structures potentially containing hazardous substances (tanks, drums, etc), abrasive blast material ("ABM"), or soil with visible or olfactory evidence of contamination, that Respondent has reason to believe is a Navy Retained Condition or Special Exclusion, soil disturbing activity shall be suspended and notice shall be given to EPA, DTSC, RWQCB and the Navy project coordinators as soon as reasonably possible. This notice shall be provided at the same time notice is given to the Navy pursuant to Section 301 of the ETCA ~~and shall indicate whether the Respondent believes that the Environmental Condition is within the definition of Environmental Services for which it is responsible or asserts that the condition is a Navy Retained Condition or Special Exclusion for which the Navy is responsible. The notice should include:~~ (i) a brief description and electronic images of the condition, (ii) Respondent's initial assessment of the condition, (iii) any proposal for addressing the ~~newly discovered~~ condition including the scope of any further investigation that may be necessary to ascertain whether the discovery is within the scope of Environmental Services, and (iv) an explanation/basis for any assertion by the Respondent that the Environmental Condition is not within the definition of Environmental Services.

(b) If the Respondent asserts, as provided in subparagraph 42.a, that the Navy is responsible for addressing the Environmental Condition because it is a Navy Retained Condition or Special Exclusion and the Navy does not agree with the Respondent's assertion within 30 days of receipt of the Notice, EPA, DTSC and RWQCB, shall meet with Respondents and the Navy and confer in an attempt to reach a mutually agreeable solution to address the circumstances, including, if appropriate agreeing to the scope of, and allocation of costs for, any further investigation that may be necessary to ascertain whether the discovery is within the scope of Environmental Services.

(c) EPA, following consultation with DTSC, RWQCB, Respondents, and the Navy, and any further investigation as necessary, as provided in subparagraph 42.b, will determine in writing whether the ~~newly discovered Unknown~~ Environmental Condition falls within the definition of Environmental Services, Special Exclusions, or Navy Retained Conditions. ~~EPA and the Navy, following consultation with DTSC and RWQCB, shall determine whether the condition falls within one or more of the following CERCLA procedural categories; (i) it is within the scope of the remedies selected in the RODs (including RMP requirements for maintenance and restoration of soil covers); (ii) it requires an ESD or ROD amendment, (iii) it is within the scope of an approved CERCLA removal action memorandum, or (iv) it requires the preparation of an action memorandum.~~ If EPA determines that the condition falls within the definition of Environmental Services, Respondent shall address the Environmental Condition in accordance with the applicable RMP, subject to Respondent's rights to initiate the dispute resolution process as provided in Section 72.

(d) If Respondent, or its contractors discover or receive actual notice of an unexpected Environmental Condition during the conduct of the remedial action, other than an event or condition covered by the requirements of Paragraph 55 (Emergency Response),

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

including but not limited to physical structures potentially containing hazardous substances (tanks, drums, etc), or soil with visible or olfactory evidence of contamination, that Respondent believes is within the Scope of Environmental Services, Respondent shall (i) notify EPA, DTSC, RWQCB and the Navy, (ii) collect and analyze characterization samples, and (iii) characterize and address the condition in accordance with the applicable RMP. All sampling and characterization data shall be submitted to EPA, DTSC, and RWQCB and performed in accordance with the applicable quality assurance standards, as provided in Section XI.

43. Each Respondent shall submit a hard copy and an electronic copy of all plans, reports, and data required by the SOW, each Remedial Design ~~Work Plan~~Package Report, each Remedial Action Work Plan, or any other document ~~which~~ that respondent is required to submit under the Scope of Work to EPA in accordance with the schedules set forth in such plans. The submitting Respondent shall simultaneously submit copies of all such plans, reports and data the Respondent is required to submit under the Scope of Work to DTSC, RWQCB, and the Navy. Upon request by EPA, DTSC, RWQCB, or the Navy, the submitting Respondents shall submit in electronic form all portions of any report or other deliverable Respondents are required to submit pursuant to the provisions of this Order. All reports and other documents submitted by Respondents to EPA, DTSC RWQCB, and the Navy (other than the monthly progress reports referred to above) which purport to document Respondents' compliance with the terms of this Order shall be signed by an authorized representative of the Respondents.

XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

44. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Order, EPA, after consultation with DTSC, RWQCB, and the Navy shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the submitting Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the submitting Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

45. In the event of approval, approval upon specified conditions, or modification by EPA, pursuant to Paragraph 47, the submitting Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XXIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 46(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXIV (Stipulated Penalties).

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

46. Resubmission of Plans.

Formatted: Keep with next

(a) Upon receipt of a notice of disapproval pursuant to Paragraph 44, the submitting Respondent shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXIV, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 54.

(b) Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 44, the submitting Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XXIV (Stipulated Penalties).

47. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, after consultation with DTSC, RWQCB, and the Navy, EPA may again require the submitting Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. The submitting Respondent shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XXIII (Dispute Resolution).

48. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the submitting Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the submitting Respondent invokes the dispute resolution procedures set forth in Section XXIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXIII (Dispute Resolution) and Section XXIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIV.

49. All plans, reports, and other items required to be submitted to EPA, DTSC and RWQCB under this Order shall, upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

XV. PROJECT COORDINATORS

50. Within 20 days of the Effective Date of this Order, each Respondent, DTSC, RWQCB, the Navy, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

change is made. The Respondents' Project Coordinators shall be subject to disapproval by EPA, in consultation with DTSC, RWQCB, and the Navy, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Respondents' Project Coordinators shall not be attorneys for the Respondents in this matter. They may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during remedial activities.

51. EPA, DTSC, RWQCB, and the Navy may designate other representatives, including, but not limited to EPA, DTSC RWQCB, and Navy employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Order. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Order and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material. EPA's Project Coordinator, DTSC's Project Coordinator, RWQCB's Project Coordinator, the Navy's BRAC Environmental Coordinator or functional equivalent, and the Respondents' Project Coordinators will meet on a monthly basis or on such other schedule as they shall approve.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

52. EPA, DTSC and RWQCB hereby acknowledge that the funds provided by the Navy pursuant to the ETCA, and the Environmental Insurance Policies procured pursuant to the ETCA provide sufficient Financial Assurance of the Respondents' ability to complete the Work.

XVII. CERTIFICATION OF COMPLETION

53. Certification of Completion of the Remedial Action. With respect to each ROD Implementation Area, the following procedures and requirements shall apply:

(a) Within 90 days after Respondents conclude that the Remedial Action for a ROD Implementation Area and any additional response action required to address Unknown Condition Discovered in the Course of Remediation prior to issuance of a Certification of Completion ("additional response action") has been either: (1) fully performed, including recordation of a modification to the LUC(s), if required by EPA, and initial implementation of any other ~~institutional controls~~LUCs called for in the ROD or decision document for any additional response action, and the Remedial Action Objectives for the Remedial Action and response action objectives for any additional response action have been attained, or (2), for remedies involving long-term operation of a groundwater or soil vapor ~~remediation-intrusion mitigation~~ system, the system is constructed, in place, and is operating properly and successfully but the Remedial Action Objectives or additional response action objectives have not been attained, Respondents shall schedule and conduct a pre-certification inspection to be attended by Respondents, EPA, DTSC, RWQCB and the Supervising Contractor(s). If, after the pre-certification inspection, Respondents still believe that the Remedial Action and any additional

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

response action have been fully performed and the Remedial Action Objectives and additional response action objectives for such additional response action have been attained or for remedies involving long-term operation of a groundwater or soil vapor ~~remediation-intrusion mitigation~~ system, the system is constructed, in place and is operating properly and successfully but the Remedial Action Objectives have not been attained, Respondents shall, as applicable, submit to EPA for approval a RACR requesting Certification of Completion of Remedial Action, with a copy to the DTSC and RWQCB, pursuant to Section XIV (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a professional engineer registered in the State and Respondents' Project Coordinator shall state that the Remedial Action and any additional response action required for the ROD Implementation Area have been completed in full satisfaction of the requirements of this Order. The RACR shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible official of Respondents or the Respondents' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(b) If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after consultation with DTSC and RWQCB, determines that the Remedial Action and any additional response action required for the ROD Implementation Area or any portion thereof ~~has~~ not been completed in accordance with this Order or that the Remedial Action Objectives and additional response action objectives for any additional response action have not been achieved, EPA will notify Respondents in writing of the activities that must be undertaken by Respondents pursuant to this Order to fulfill the requirements for obtaining a Certification of Completion of Remedial Action; provided however, that EPA may only require Respondents to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD and decision document for any additional response action. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require the Respondents to submit a schedule to EPA, DTSC and RWQCB for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to Respondents' right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

(c) If EPA concludes, based on the initial or any subsequent RACR requesting Certification of Completion of Remedial Action and after consultation with DTSC and RWQCB, that the Remedial Action and any additional response action required have been performed in accordance with this Order and that the Remedial Action Objectives and additional response action objectives for any additional response action have been achieved, EPA will so certify in writing to Respondents. This certification shall constitute, as applicable, a Certification of Completion of Remedial Action or Certification of Completion of a ROD Implementation Area for purposes of this Order. Receipt of a Certification under this Paragraph 53 of Completion of the Remedial Action shall not affect Respondent's obligations under this Order to perform required actions other than those necessary to obtain the Certification.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(d) After EPA has issued a Certification of Completion of Remedial Action for each ROD Implementation Area within the Site, EPA shall certify in writing to Respondents that the Remedial Action and any additional response action required for the entire Site have been performed in accordance with this Order and that the Remedial Action Objectives and additional response action objectives for any additional response action have been achieved for the entire Site. This certification shall constitute a Certification of Completion of Remedial Action for the Site.

54. NPL Deletion.

After EPA has issued a Certification of Completion of Remedial Action for all of ROD Implementation Areas comprising Parcel G and/or for all of the ROD Implementation Areas comprising the portion of Parcel B within the Site; EPA will consider a request to initiate the regulatory proceedings necessary to effectuate a Partial Deletion from the National Priorities List of Parcel G and/or the portion of Parcel B within the Site from the Hunters Point Naval Shipyard Superfund Site.

((Navy Note: Par. 55 has gone missing))**(City team note – we have re-numbered accordingly)**

XVIII. EMERGENCY RESPONSE

55. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of hazardous substances at the Site that constitutes an emergency situation, or may present an immediate threat to public health or welfare or the environment, the Respondent that owns the property where the release has been caused or threatened shall, subject to Paragraph ~~57~~**56**, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's, DTSC's, RWQCB's, and the Navy's Project Coordinators. If EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator must be notified. If neither of these EPA persons is available, that Respondent shall notify the EPA Emergency Response Unit, Region 9. That Respondent shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Respondents fail to take appropriate response action as required by this Section and EPA takes such action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP, pursuant to Section XIX (Payments for Response Costs).

56. Nothing in the preceding Paragraph or in this Order shall be deemed to limit any authority of the United States or the State, including DTSC and RWQCB, to a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, or b) direct or order such action, or seek an order from a Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

XIX. PAYMENTS FOR ~~EPA FUTURE~~ RESPONSE COSTS

57. The amounts to be paid by Respondents pursuant to Paragraph ~~59-58~~ shall be deposited in the HPNS Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

58. Payments for EPA Future Response Costs.

(a) Respondents shall pay to EPA all EPA Future Response Costs not inconsistent with the National Contingency Plan. Except as provided in Paragraph ~~5958~~.c below, EPA will send Respondents, on a periodic basis, a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph ~~6059~~. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and EPA Site/Spill ID Number #XXXXXX Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

(b) At the time of payment under Paragraph ~~6968~~.a or 59.c, Respondents shall send notice that payment has been made to EPA and to the Regional Financial Management Officer, in accordance with Section XXXV (Notices and Submissions).

(c) Within 30 days of the Effective Date, Respondents shall pay to EPA \$ [to be determined] in prepayment of anticipated EPA Future Response Costs. The total amount paid shall be deposited by EPA in the HPNS Special Account, within the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA to conduct or finance future response actions. Respondents shall make the payment required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and EPA Site/Spill ID Number #XXXX Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

In the event that the payments required by this subparagraph are not made within 60 days of the Effective Date, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the thirtieth day following the Effective Date. The Interest shall accrue through the date of the Respondents' payment.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(d) After EPA issues its written Certification of Completion of Work and EPA has performed a final accounting of EPA Future Response Costs, EPA shall offset the final bill for EPA Future Response Costs by any unused amount paid by the Respondents pursuant to Paragraph ~~5958~~.a or Paragraph ~~5958~~.c. Any amount in excess of amounts due to EPA shall be returned to Respondents.

59. Respondents may contest payment of any EPA Future Response Costs under Paragraph ~~59-58~~ if Respondents determine that EPA has made an accounting error or if Respondents alleges that a cost item that is included represents costs that are inconsistent with the NCP or if the cost is outside the definition of EPA Future Response Costs. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA pursuant to Section XXXV (Notices and Submissions). Any such objection shall specifically identify the contested EPA Future Response Costs and the basis for objection. In the event of an objection, the Respondents shall within the 30-day period pay all uncontested EPA Future Response Costs to EPA in the manner described in Paragraph ~~5958~~. Simultaneously, the Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs. The Respondents shall send to EPA, as provided in Section XXXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested EPA Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondents shall initiate the Dispute Resolution procedures in Section XXIII (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, the Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph ~~5958~~. If Respondents prevail concerning any aspect of the contested costs, the Respondents shall pay that portion of the costs (plus associated accrued interest) for which Respondents did not prevail to the United States in the manner described in Paragraph ~~5958~~; Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Respondents' obligation to reimburse EPA for its EPA Future Response Costs.

60. In the event that the payments required by Paragraph ~~5958~~.a. are not made within 30 days of the Respondents' receipt of the bill, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the date of the bill.

61. Payment of DTSC Future Response Costs.

(a) As of the Effective Date of this Order, Respondents shall pay all of DTSC's Future Response Costs related to the Work performed under this Order. DTSC will bill Respondents quarterly for its response costs. Respondents shall pay DTSC within sixty (60) days of date of invoice. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the invoice pursuant to California Health and Safety Code section 25360.1. All payments made by Respondents pursuant to this Order shall be by cashier's or

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

certified check made payable to "DTSC," and shall bear on the face the project code of the Site (Site ____) and the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Order.

(b) If Respondents disputes a DTSC billing, or any part thereof, Respondents shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project manager and branch chief. If Respondents desires to formally request dispute resolution with regard to the billing, Respondents shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondents shall pay all costs which are undisputed in accordance with Subparagraph 6261.a. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of DTSC interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Special Assistant for Cost Recovery and Reimbursement Policy
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this Order. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

62. Payment of RWQCB Future Response Costs.

(a) As of the Effective Date of this Order, the Respondents are liable for all of the RWQCB's costs related to the Work performed under this Order in responding to the hazardous materials at the Site. Cost recovery may be pursued by the RWQCB under CERCLA, California Health and Safety Code Sections 25187.2 and 25360, California Water Code Sections 13304 and 13365, or any other applicable state or federal statute or common law. The RWQCB will bill the Respondents quarterly for oversight activities performed by the RWQCB hereunder. The Respondents shall pay the RWQCB within sixty (60) days of receipt of the RWQCB's billing. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the billing pursuant to California Health and Safety Code section 25360.1. All payments made by the Respondents pursuant to this Order shall be by cashier's check or certified check made payable to the RWQCB and shall bear on the face the project code of the Site 2169.6032

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

- (b) Payments to the RWQCB shall be sent to:

State Water Resources Control Board
SCP Program
P.O. Box 944212
Sacramento, CA 94244-2120

A photocopy of all payment checks shall also be sent to the person designated by the RWQCB to receive submittals under this Order.

(c) If Respondents dispute a RWQCB billing, or any part thereof, Respondents shall notify the RWQCB's assigned project manager and attempt to informally resolve the dispute with the RWQCB's project manager and immediate supervisor. If Respondents desires to formally request dispute resolution with regard to the billing, Respondents shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondents shall pay all costs which are undisputed in accordance with Subparagraph ~~6362~~.a. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of RWQCB interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Executive Officer
CA Regional Water Quality Control Board, San Francisco Bay
1515 Clay Street, Suite 1400
Oakland, CA 94612
Tel (510) 622-2300 Fax (510) 622-2460

A copy of the written request for dispute resolution shall also be sent to the person designated by the RWQCB to receive submittals under this Order. A decision on the billing dispute will be rendered by the Executive Officer, or his designee.

XX. INDEMNIFICATION AND INSURANCE

63. Respondents' Indemnification of the United States and State.

(a) The United States does not assume any liability by entering into this agreement. Respondents shall indemnify, save and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. Further, the Respondents agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. Neither the United States nor the

Formatted: zzmptTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

State shall be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Order. Neither the Respondents nor any such contractor shall be considered an agent of the United States or the State.

(b) The United States and the State shall give Respondents notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph ~~64-63~~.a. and shall consult with Respondents prior to settling such claim.

(c) Nothing in this Paragraph ~~64-63~~ or Paragraph ~~65-64~~ shall be construed to waive or in any way limit any rights Respondents may have against the United States as a result of acts or omissions for which the United States Navy is responsible, including but not limited to rights under CERCLA or Section 330 of the FY 1992 National Defense Authorization Act, as amended or under the Conveyance Agreement for Hunters Point Shipyard between the United States Navy and SFRA on _____, or under any deed to be executed by the Navy for any portion of the Site. Nothing in this paragraph shall be construed or interpreted in a manner inconsistent with the indemnifications, waivers, and releases of liability in Section 711 of the ETCA.

64. Respondents waives all claims against the United States and the State, including DTSC and RWQCB, for damages or reimbursement or for set-off of any payments made or to be made to the United States or DTSC and RWQCB arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States and the State, including DTSC and RWQCB, with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays, provided, however, that nothing herein shall limit Respondents' right to claim that any delays caused by the United States and/or State, including the DTSC and RWQCB, constitute a force majeure event under this Agreement.

65. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary of EPA's last Certification of Completion of the Remedial Action applicable to the Site pursuant to Section XVII (Certification of Completion), comprehensive general liability insurance with limits of five (5) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States, DTSC, and RWQCB as additional insureds. In addition, for the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. Prior to commencement of the Work under this Order, Respondents shall provide to EPA, DTSC and RWQCB certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrates by evidence satisfactory to EPA, DTSC and RWQCB that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXI. FORCE MAJEURE

66. “Force Majeure” for purposes of this Order, is defined as any event arising from causes beyond the control of the Respondents, of any entity controlled by Respondents, or of Respondents’ contractors, that delays or prevents the performance of any obligation under this Order despite Respondent’s best efforts to fulfill the obligation. Without limitation, a court-ordered injunction or stop work order related to any Work required by this Order is considered to be a Force Majeure event. In addition, Respondents’ inability to perform Work required under this Order due to the Navy’s failure or delay in addressing a Navy Retained Condition, or any breach of the ETCA by the Navy, shall be considered a Force Majeure event. The requirement that the Respondents exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. “Force Majeure” does not include a failure to attain the Remedial Action Objectives or financial inability to complete the Work, except to the extent that a failure by the Navy to fund all or a portion of the ETCA delays or prevents performance of obligations under this Order that are funded by the ETCA. Except as otherwise provided in this Paragraph ~~6766~~, “Force Majeure” shall not, except as set forth above, include any delays caused by any disputes between the Navy and/or Respondents or any successors in title to the Site. Any delays caused by disagreements between or among EPA, DTSC and/or RWQCB and/or the Navy, or any other regulatory agency with jurisdiction over any matter herein, shall be considered out of Respondents’ control, shall be considered a Force Majeure event, and Respondents shall have no obligation under this Order to mitigate the effects of such Force Majeure event.

67. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a Force Majeure event, the Respondents shall notify EPA’s Project Coordinator, DTSC’s Project Coordinator, RWQCB’s Project Coordinator, and the Navy’s Project Coordinator, or, in his or her absence, their Alternate Project Coordinators or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund Division, EPA Region 9, within 48 hours of when Respondents first knew that the event might cause a delay. Within 14 days thereafter, Respondents shall provide in writing to EPA, DTSC, RWQCB, and the Navy an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondents’ rationale for attributing such delay to a Force Majeure event if Respondents intend to assert such a claim; and a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondents shall include with any notice all available documentation supporting Respondents’ claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

68. If EPA, after consultation with DTSC, RWQCB, and the Navy, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Order that are affected by the Force Majeure event will be extended by EPA, after consultation with DTSC, RWQCB, and the Navy, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with DTSC, RWQCB, and the Navy, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify the Respondents in writing of its decision. If EPA, after consultation with DTSC, RWQCB, and the Navy, agrees that the delay is attributable to a Force Majeure event, EPA will notify the Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

69. If the Respondents elect to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution), Respondents shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs ~~67-66~~ and ~~68-67~~, above. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Order identified to EPA.

XXII. EPA, DTSC AND RWQCB DISPUTE PROCESS

70. If disagreements or disputes arise during the consultation process between EPA, DTSC and RWQCB under this Order, EPA, DTSC and RWQCB agree to use the process outlined in this Paragraph to resolve such disputes. EPA, DTSC and RWQCB shall, whenever possible, make decisions by consensus at the Project Coordinator level. In the event a consensus decision cannot be reached by the EPA, DTSC and RWQCB Project Coordinators concerning the approval of a document or deliverable required by this Order, a meeting or telephone conference shall be scheduled and held within five (5) days of DTSC and/or RWQCB raising the dispute among EPA, DTSC and RWQCB Project Coordinators and their immediate supervisors to reach a consensus decision. If consensus cannot be reached by the immediate supervisors, the dispute shall be immediately elevated to the EPA Region 9 Assistant Director of the Federal Facility and Site Cleanup Branch, the DTSC Supervising Hazardous Substances Engineer II, xxxxx Office, Brownfields and Environmental Restoration Program, and the RWQCB Section Chief, Site Cleanup Section, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed above in an attempt to resolve the dispute through consensus. If no consensus can be reached, the dispute shall be immediately elevated to the EPA Region 9 Director of the Superfund Division, the DTSC Deputy Director for Site Mitigation and Brownfields Reuse, and the RWQCB Executive Officer, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed in the previous sentence in an attempt to resolve the dispute through consensus. If no consensus can be reached, the

Formatted: zzmptTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

decision applicable to Respondents shall be the final decision made by the EPA Region 9 Director of the Superfund Division. By agreeing to this decision making process, DTSC and RWQCB do not waive any right or claim each agency may have for relief, and reserve any authority they may have under federal or state law to require Waste Material cleanups compliant with such law.

XXIII. DISPUTE RESOLUTION

71. The dispute resolution procedures of this Section shall be utilized to resolve disputes between Respondents and EPA arising under or with respect to this Order prior to the exercise of any other rights or remedies Respondents may have under applicable law to object to or challenge a decision of any other Party to this order. The dispute resolution procedures of this Section shall also be utilized to resolve disputes between Respondents, and EPA relating to the issue of whether an Environmental Condition or action falls within the scope of Environmental Services or is a Navy Retained Condition or Special Exclusion following the completion of the notification and “meet and confer” procedures set forth in Paragraph 42. However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of the Respondents that have not been disputed in accordance with this Section.

72. Any dispute which arises under or with respect to an EPA decision under this Order shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Respondents sends the other Parties a written Notice of Dispute.

73. Statements of Position. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, except on disputes regarding DTSC or RWQCB Future Response Costs reimbursement, shall be final unless within 14 days after the conclusion of the informal negotiation period, Respondents invoke the formal dispute resolution procedures of this Section by serving on EPA (and the Navy or Respondents as appropriate, with copies concurrently provided to DTSC, RWQCB, and Navy, a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and all supporting documentation relied upon.

74. Within 21 days after receipt of the Statement of Position, EPA will serve on all other parties and the Navy its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 7 working days after receipt of EPA’s Statement of Position, Respondents may submit a Reply. DTSC and RWQCB may also file a Statement of Position for EPA’s consideration on the disputed matter no later than 7 days from receipt of EPA’s Statement of Position.

75. Following receipt of all statements to be submitted pursuant to Paragraphs ~~74-73~~ and ~~7574~~, the Director of the Superfund Division, EPA Region 9 will issue a final decision resolving the dispute. The Superfund Division Director’s decision shall be final. The invocation

Confidential

of formal dispute resolution procedures under this section shall not restrict Respondents rights and remedies available under applicable law.

76. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondents under this Order, not directly in dispute, unless EPA, after consultation with DTSC and RWQCB, agrees otherwise. In the event that the Respondents do not prevail on the disputed issue, stipulated penalties may be assessed and shall be paid as provided in Section XXIV (Stipulated Penalties). If respondents prevail on the dispute issue, the stipulated penalties shall be discharged.

XXIV. STIPULATED PENALTIES

77. A Respondent shall be liable for stipulated penalties in the amounts set forth in Subparagraphs ~~7877~~.a. and b. to EPA, DTSC, and RWQCB, with 50% of such penalties to be paid to EPA and 30% to DTSC and 20% to RWQCB, for failure to comply with the requirements of this Order specified below, unless excused under Section XXI (Force Majeure). Payment of stipulated penalties to DTSC and RWQCB shall be split evenly, unless otherwise directed in the demand letter set forth in Paragraph ~~8480~~. "Compliance" by a Respondent shall include completion of the activities required to be completed by that Respondent under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order. Except with respect to an emergency or other situation described in ~~Section-Paragraph 5655~~ above, a Respondent shall not be liable for the stipulated penalties set forth in this Section as a result of the failure of the other Respondent to comply with the Order.

(a) Stipulated Penalty Amounts – Work, including Payment of Future Response Costs.

The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph (i):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th day
\$2,500	30th through 45th day
\$15,000	45th day and beyond

(b) Compliance Milestones. The following shall constitute general categories of "compliance milestones" subject to stipulated penalties under Paragraph ~~7877~~.a. Specific documents/actions within Paragraph ~~78.a.i.77.b~~(1) – (7) shall be subject to the stipulated penalties set forth above to the extent such documents have been designated "critical path" documents by Respondents in each Monthly Progress Report and subject to approval by EPA.

- 1) Remedial Action Workplan
- 2) Operations and Maintenance Plan

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

- 3) Remedial Action Completion Report
- 4) Work Status Report
- 5) Late Payment of EPA, DTSC, or RWQCB Future Response Costs
- 6) Failure to comply with any use restrictions selected in the RODs
- 7) Failure to provide access pursuant to Paragraph 35
- 8)

(c) Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports, including the Annual GW monitoring Report, the Annual O & M Compliance Monitoring Report and Incident Reports, or other written documents not within the scope of Subparagraph ~~78.a.i~~77.b above, and any other violation of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th day
\$1,500	30th through 45th day
\$10,000	45th day and beyond

78. All penalties shall begin to accrue on the day performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency except as set forth in Paragraph 48; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph ~~76-75~~ of Section XXIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Respondents' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

79. All penalties accruing under this Section shall be due and payable within 30 days of the Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Attn: Region 9 Receivables, P.O. Box 37109M, Pittsburgh PA 15262-0001, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0941. Copies of check(s) paid pursuant to this Section, and any

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

accompanying transmittal letter(s), shall be sent to EPA, DTSC, and RWQCB as provided in Section XXXV (Notices and Submissions).

80. All payments to DTSC and RWQCB under this Section shall be due and payable within 30 days of the Respondents' receipt from DTSC and the RWQCB of a demand for payment of the penalties, unless Respondents invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to DTSC under this section shall be paid by cashier's or certified check made payable to "DTSC," and shall bear on the face the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

All payments to RWQCB under this section shall be paid by certified or cashier's check(s) made payable to the State Water Resources Control Board Cleanup and Abatement Account and shall bear on the face the Docket number of this Order.

The check should be made payable to CA Regional Water Quality Control Board, San Francisco Bay in addition to the Docket number of the Order, the check should include "File 2169.6032."

The payment should be sent to:

CA Regional Water Quality Control Board, San Francisco Bay
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

81. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Order.

82. Penalties shall continue to accrue as provided in Paragraph ~~89-88~~ during any dispute resolution period. Any such penalties need not be paid until the following: If the dispute is resolved by agreement, or by a decision of EPA, accrued penalties determined to be owing shall be paid to EPA within 30 days of the agreement or the receipt of EPA's decision or order. If Respondents prevail on the disputed issue, the stipulated penalties shall be discharged.

83. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph ~~8+80~~.

84. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided,

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Order.

85. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XXV. COVENANT NOT TO SUE BY EPA

86. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the continuing and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to EPA by the Respondents in this Order. Except as provided in paragraph 20, this covenant not to sue extends only to Respondents and does not extend to any other person.

XXVI. RESERVATIONS OF RIGHTS BY EPA

87. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

88. The covenant not to sue set forth in Section XXV above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- (a) claims based on a failure by Respondents to meet a requirement of this Order;
- (b) liability based on Respondents' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this Order, or otherwise ordered by EPA, after signature of this Order by the Respondents;
- (c) criminal liability;

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(d) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments arising from negligent acts or omissions of the Respondents or their contractors;

~~(d)~~(e) liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;

~~(e)~~(f) liability for violations of federal or state law which occur during or after implementation of Removal or Remedial Actions; and

~~(f)~~(g) liability for additional response actions that EPA determines are necessary to achieve Remedial Action Objectives.

XXVII. DTSC AND RWQCB COVENANT NOT TO SUE

89. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, DTSC and RWQCB covenant not to sue or to take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the continuing and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to DTSC and RWQCB by the Respondents in this Order. Except as provided in paragraph 20, this covenant not to sue extends only to Respondents and does not extend to any other person.

XXVIII. DTSC AND RWQCB RESERVATIONS OF RIGHTS

90. The covenant not to sue by DTSC and RWQCB set forth in Section XXVII does not pertain to any matters other than those expressly identified therein. DTSC and RWQCB reserve, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including but not limited to:

(a) claims based on a failure by Respondents to meet a requirement of this Order;

(b) liability for costs incurred or to be incurred by the State that are not reimbursed by Respondents pursuant to this Order, except for Navy-Retained Conditions;

(c) liability for performance of response actions other than the Work approved under the Order performed by Respondents pursuant to this Order, except for Navy-Retained Conditions;

(d) criminal liability;

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

(f) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site unless such waste material constitute Navy-Retained Conditions; and

(g) liability for violations of local, state or federal law or regulations.

XXIX. COVENANTS BY RESPONDENTS

91. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, or the State, or its contractors and employees, with respect to Existing Contamination, Future Response Costs, or this Order, including, but not limited to:

(a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(b) any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Work required by this Order; or

(c) any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

(d) These covenants not to sue do not apply to any claim or cause of action Respondents may have against the United States as a result of acts or omissions for which the United States Navy is responsible, including but not limited to rights under CERCLA or Section 330 of the FY 1992 National Defense Authorization Act, as amended or under the Conveyance Agreement for Hunters Point Shipyard between the United States Navy and SFRA on _____, or under any deed to be executed by the Navy for any portion of the Site. Nothing in this paragraph shall be construed or interpreted in a manner inconsistent with the indemnifications, waivers, and releases of liability in the ETCA.

92. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs ~~89-88~~ (b), (c), (d), (f) and (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

93. Nothing in this Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

XXX. OTHER CLAIMS

94. By issuance of this Order, the United States, including EPA, the Navy and the State, including DTSC and RWQCB, assume no liability for injuries or damages to persons or Site resulting from any acts or omissions of Respondents.

95. This order shall not be construed to give rise to any right to judicial review, not otherwise provided by applicable law, of any action or decision by EPA pursuant to this Order, including selection of further response actions by EPA and the Navy

XXXI. CONTRIBUTION

96. Nothing in this Agreement precludes the United States, the State, or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Order, including any claim Respondents may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2),(3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

97. In the event of a suit or claim for contribution brought against Respondents, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that either Respondents is not a Bonafide Prospective Purchaser (“BFPP”), or has lost its status as a BFPP as a result of actions taken in compliance with this Order or at the directions of EPA’s RPM, the Parties agree that this Order shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Order. The “matters addressed” in this Order are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, DTSC, RWQCB or Respondents with respect to Existing Contamination.

98. In the event Respondents were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of actions taken in compliance with this Order or at the directions of EPA’s RPM, the Parties agree that this Order shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability for all response actions taken or to be taken and all response costs incurred or to be incurred by EPA, DTSC, RWQCB or by any other person with respect to Existing Contamination.

99. Respondents agree that with respect to any suit or claim brought by it for matters related to this Order they will notify EPA, DTSC, and RWQCB in writing no later than 60 days prior to the initiation of such suit or claim.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

100. Respondents also agree that with respect to any suit or claim for contribution brought against it for matters related to this Order they will notify in writing EPA, DTSC, and RWQCB within 10 days of service of the complaint on it.

XXXII. NONCOMPLIANCE, STOP WORK, AND DEFAULT DETERMINATIONS

101. Respondents shall perform and complete all necessary response actions at the Site (except for Navy-Retained Condition, Special Exclusions, or other activities outside of the Environmental Services) in accordance with the SOW, CERCLA, the NCP, ARARs not otherwise waived, and relevant guidance. The completion date for any scheduled activity or report may be extended for a period not to exceed 60 days upon written request, provided that such request is received at least 30 days prior to the scheduled completion date.

102. Notices of Noncompliance and Stop Work. Following EPA's determination, after consultation with DTSC, RWQCB, and the Navy, that Respondents have failed to comply with a requirement of this Order, EPA shall give Respondents written notification of the same, with a copy to the Navy, DTSC, and RWQCB and describe the noncompliance ("Notice of Noncompliance"). EPA shall also give Respondents written notification that Respondents should stop work on all or any portion of its response action activities at the Site until EPA determines that Respondents have remedied such noncompliance ("Notice to Stop Work"). Upon receipt of a Notice to Stop Work, Respondents shall immediately stop work on all or any portion of its response action activities at the Site as specified in such notice, and shall remedy the noncompliance. Respondents shall resume such response action activities only upon receipt of written notification from EPA, after consultation with DTSC, RWQCB, and the Navy, that Respondents may proceed with such activities as specified in the notification.

103. Finding of Default. EPA, after consultation with DTSC, RWQCB, and the Navy, may determine that a Default has occurred in one or more of the following situations: (i) EPA has issued to Respondents two or more Notices of Noncompliance for significant noncompliance, with or without accompanying Notices to Stop Work, pursuant to Paragraph ~~103~~102; (ii) EPA determines that either Respondent is implementing the Work in a manner that may cause endangerment to human health or the environment; (iii) EPA determines that either Respondent has effectively ceased to perform all or a portion of the Work for any reason, including lack of Navy funding through the ETCA, except for a Force Majeure event pursuant to Section XXI that results in only a temporary delay in performance; (iv) either Respondent misappropriates or misuses funds received under the ETCA; or (v) Respondents are substantially and consistently deficient or late in their performance of the Work. Prior to issuance of a Finding of Default, EPA shall provide Respondents in writing (with copies to the Navy, DTSC and RWQCB) with a Notice of Intent to Find Default and of the proposed basis for issuing a Finding of Default. Respondents may dispute the Notice of Intent to Find Default, in accordance with the process provided in Section XXIII (Dispute Resolution), and the Navy may participate in any such dispute resolution as provided in Section ___ of the Amended FFA. In the event of an EPA determination that a Default has occurred, either without Respondents having invoked the Dispute Resolution process in Section XXIII, or following the conclusion of such Dispute Resolution process, EPA will send Respondents a written Finding of Default, with copies to the Navy, DTSC, and RWQCB. The Finding of Default will provide the basis for EPA's

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

determination and will specify whether Respondents may continue to perform the Work while the Navy prepares to resume response action activities under the Amended FFA.

104. Within thirty (30) days of Respondents' receipt of the Finding of Default, or such other time period specified by EPA, Respondents shall cease performance of the Work.

105. In the event that the Navy resumes performance of response action activities under the Amended FFA, Respondents shall fully cooperate in the orderly transfer of responsibilities for performance of the Work to the Navy.

XXXIII. ACCESS TO INFORMATION

106. Respondents shall provide to EPA, DTSC, RWQCB, and the Navy, upon request, copies of all documents and information within Respondents' possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, DTSC, RWQCB, and the Navy for purposes of investigation, information gathering, or testimony, Respondents' employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

(a) Business Confidential and Privileged Documents. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA, DTSC and RWQCB under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, DTSC, RWQCB, and the Navy or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

(b) The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents asserts such a privilege in lieu of providing documents, Respondents shall provide EPA, DTSC, RWQCB, and the Navy with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

(c) No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific,

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXXIV. RETENTION OF RECORDS

107. Until 10 years after the Respondents' receipt of EPA's notification pursuant to Paragraph ~~555~~3.c. of Section XVII (Certification of Completion of the Work), Respondents, or their successors, shall preserve and retain all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondents (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

108. At the conclusion of this document retention period, Respondents, or its successor, shall notify EPA, DTSC, RWQCB, and the Navy at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, DTSC, or the Navy, Respondents shall deliver any such records or documents to EPA, DTSC and RWQCB. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, Respondents shall provide EPA, DTSC, RWQCB, and the Navy with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

XXXV. NOTICES AND SUBMISSIONS

109. Whenever under the terms of this Order, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Order with respect to EPA, DTSC, RWQCB and the Respondents, respectively.

As to the EPA:

Director, Superfund Division
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

and

EPA Project Coordinator, SFD-8-1
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the Regional Financial Management Officer:

Chief, Cost Accounting
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the California Department of Toxic Substances Control:

Anthony J. Landis, P.E.

Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substance Control
8800 Cal Center Drive
Sacramento, CA 95826

and

Project Manager
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

and

As to the Navy:

Navy BRAC Environmental Coordinator for Hunter's Point Shipyard
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310

and

As to the San Francisco Bay Regional Water Quality Control Board:

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

Executive Officer
CA Regional Water Quality Control Board, San Francisco Bay
1515 Clay Street, Suite 1400
Oakland, CA 94612
Tel (510) 622-2300 Fax (510) 622-2460

Project Manager - Hunters Point Shipyard
CA Regional Water Quality Control Board, San Francisco Bay
1515 Clay Street, Suite 1400
Oakland, CA 94612
Tel (510) 622-2300 Fax (510) 622-2460

As to the Respondents:

XXXVI. APPENDICES

110. The following appendices are attached to and incorporated into this Order:

- A. Legal description of the Site
- B. Map of the Site
- C. Statement of Work
- D. ROD Implementation Areas**
- E. Land and Water Use Restrictions (NOTE: What is intended by the – the LUCs? The RMPs?)

XXXVII. COMMUNITY RELATIONS

111. Respondents shall prepare and submit for review and approval by EPA, in consultation with DTSC and RWQCB, a Community Relations Plan, as defined in the SOW. EPA, after consultation with DTSC and RWQCB, will determine the appropriate role for the Respondents under the Plan. Respondents shall also cooperate with EPA, DTSC, and RWQCB in providing information regarding the Work under this Order to the public. As requested by EPA, Respondents shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site or the Work being conducted under this Order.

XXXVIII. MODIFICATIONS

112. EPA, after consultation with DTSC and RWQCB, may determine that in addition to tasks defined in the SOW, or initial approved work plans, other additional work may be necessary to accomplish the Remedial Action Objectives. To the extent that such additional work is within the scope of the RODs and does not otherwise constitute an amendment,

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

modification or supplement to the RODs, EPA, after consultation with DTSC and RWQCB, may request in writing that Respondents perform these response actions and Respondents shall confirm its willingness to perform the additional work, in writing, to EPA, DTSC, RWQCB, and the Navy within 14 days of receipt of EPA's request, or Respondents may invoke dispute resolution in accordance with Section XXIII. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA, after consultation with DTSC, RWQCB, and the Navy determines are necessary. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

113. If Respondents seeks permission to deviate from any approved work plan or schedule or the SOW, except as otherwise provided for by field modifications to Remedial Action Work Plan. Respondents' Project Coordinator shall submit a written request to EPA, DTSC, RWQCB, and the Navy outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving written approval from the EPA Project Coordinator, after consultation with the DTSC, RWQCB, and Navy Project Coordinators.

114. No informal advice, guidance, suggestion, or comment by the EPA, DTSC, Navy, or RWQCB Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified in accordance with this Section.

115. This Order shall be made available for a period of not less than thirty (30) days for public notice and comment. The United States, DTSC and RWQCB reserve the right to withdraw or withhold their consent if the comments regarding the Order disclose facts or considerations which indicate that the Order is inappropriate, improper, or inadequate.

XXXIX. TERMINATION

116. This Order shall terminate under one or more of the following circumstances:

(a) Upon a Finding of Default by EPA, in consultation with DTSC and RWQCB, under Paragraph ~~114~~113; or

(b) Upon the second anniversary of EPA's Certification of Completion of the Remedial Action for the final ROD Implementation Area, pursuant to Paragraph 53 provided that the Respondents shall have completed the initial development cover for all ROD Implementation Areas and have entered into an O & M Agreement with DTSC.

XL. EFFECTIVE DATE

117. This Order shall be effective when EPA issues written notice to Respondents that each of the following conditions have been met: a.) the expiration of the public notice and comment period for this Order and EPA's determination that comments received, if any, do not require EPA to modify or withdraw from this Order; b.) the completion of the public comment process on the FOSET; c.) the execution of the ETCA and the Amended FFA; and d.) EPA's

Confidential

approval of and the Governor of the State of California's concurrence with the Covenant Deferral Request.

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For Respondents:

Agreed this ____ day of _____, 2____.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For EPA:

Agreed this ____ day of _____, 2____.

Michael Montgomery
Assistant Director of Federal Facilities and Site
Cleanup Branch
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

Date

Robert G Carr
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For the United States:

Agreed this ____ day of _____, 2____.

Assistant Attorney General
Environment and Natural Resources Section
U.S. Department of Justice

Washington, D.C. 20530

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For DTSC:

Agreed this ____ day of _____, 2____.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

Bruce H. Wolfe
Executive Officer
CA Regional Water Quality Control Board, San Francisco Bay
1515 Clay Street, Suite 1400
Oakland, CA 94612

For RWQCB:

Agreed this ____ day of _____, 2_____.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

[City Team Comments 4/22/11](#)
[Navy Comments 2/7/11](#)
[HPS.AOC#4.0.doc](#)

EPA response 1/7/11

IN THE MATTER OF
FORMER HUNTER'S POINT NAVAL SHIPYARD

Respondents

San Francisco Redevelopment Agency and CP/HPS Development Co., LP

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP OF PORTIONS OF
THE FORMER HUNTER'S POINT NAVAL SHIPYARD
U.S. EPA Region 9

CERCLA Docket No. 2010-14
Proceeding under Sections 104, 106 and 122 of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606, and 9622.

DRAFT FOR DISCUSSION PURPOSES ONLY DO NOT CITE, QUOTE OR RELEASE

[LEGAL_US_W # 67748758.2](#)

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

TABLE OF CONTENTS

I. JURISDICTION	1
II. PARTIES BOUND	2
III. STATEMENT OF PURPOSE	3
IV. DEFINITIONS	4
V. FINDINGS OF FACT	8
VI. CONCLUSIONS OF LAW AND DETERMINATIONS	10
VII. ADMINISTRATIVE ORDER	10
VIII. GENERAL PROVISIONS	10
IX. PERFORMANCE OF THE WORK BY RESPONDENTS	12
X. REMEDY REVIEW	20
XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS	20
XII. ACCESS AND INSTITUTIONAL CONTROLS	22
XIII. REPORTING REQUIREMENTS	25
XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS	26
XV. PROJECT COORDINATORS	27
XVI. ASSURANCE OF ABILITY TO COMPLETE WORK	28
XVII. CERTIFICATION OF COMPLETION	28
XVIII. EMERGENCY RESPONSE	30
XIX. PAYMENTS FOR RESPONSE COSTS	31
XX. INDEMNIFICATION AND INSURANCE	34
XXI. FORCE MAJEURE	35
XXII. EPA, DTSC AND RWQCB DISPUTE PROCESS	37
XXIII. DISPUTE RESOLUTION	38
XXIV. STIPULATED PENALTIES	39
XXV. COVENANT NOT TO SUE BY EPA	42
XXVI. RESERVATIONS OF RIGHTS BY EPA	42
XXVII. DTSC AND RWQCB COVENANT NOT TO SUE	43
XXVIII. DTSC AND RWQCB RESERVATIONS OF RIGHTS	44
XXIX. COVENANTS BY RESPONDENTS	44
XXX. OTHER CLAIMS	45
XXXI. CONTRIBUTION	45
XXXII. NONCOMPLIANCE, STOP WORK, AND DEFAULT DETERMINATIONS	46
XXXIII. ACCESS TO INFORMATION	47
XXXIV. RETENTION OF RECORDS	48
XXXV. Notices and Submissions	49
XXXVI. APPENDICES	50
XXXVII. COMMUNITY RELATIONS	51
XXXVIII. MODIFICATIONS	51
XXXIX. TERMINATION	52
XXXX. EFFECTIVE DATE	52

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), the California Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB"), and the San Francisco Redevelopment Agency ("SFRA") and CP/HPS Development Co. LP (referred to individually as "Respondent" and collectively as "Respondents"). The Order concerns the performance of one or more remedial actions ("RD/RA") for certain hazardous substances, pollutants, or contaminants present on Parcels G, and portions of Parcel B at the former Hunter's Point Naval Shipyard ("HPNS") located at San Francisco ("Site"), described in Appendix A and depicted generally on the map attached as Appendix B) and the reimbursement for future response costs incurred by EPA, DTSC and RWQCB in connection with such CERCLA response actions.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Superfund Branch Chief (now referred to as Assistant Division Director) by Regional Delegation R9 1290.15, dated September 29, 1997. DTSC and the RWQCB sign this Order pursuant to relevant provisions of CERCLA Section 120 regarding state participation in federal facility cleanups, and Section 121(f), 42 U.S.C. §§ 9620 and 9621(f), and applicable provisions of 40 C.F.R. Subpart F, and the California Health and Safety Code, Division 20, Chapters 6.5, 6.67, 6.75, and 6.8, and the California Water Code, Division 7. The United States Department of Justice is approving and signing this Order pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. Pursuant to that certain Early Transfer Cooperative Agreement ("ETCA") Covering Portions of the Hunters Point Naval Shipyard Between the United States of America Department of the Navy ("Navy") and the SFRA dated ____, and pursuant to that certain Remediation Agreement dated ____ between the SFRA and CPHPS Development Co., Respondents have agreed to undertake the cleanup of Parcel B and a portion of Parcel G at a portion of the former Hunter's Point Naval Shipyard, which is more specifically depicted in Appendix A to this Order. This cleanup is currently being undertaken by the U.S. Navy pursuant to the terms of the Hunter's Point Naval Shipyard Federal Facilities Agreement, dated January 22, 1992 ("FFA"). The FFA is being amended to provide in general that the obligations of the Navy to conduct that portion of the cleanup of Parcel B and a portion of Parcel G at the former Hunter's Point Naval Shipyard ~~the Site~~ that SFRA has agreed to perform under the ETCA and this Order and any Operations and Maintenance Agreement ("O&M Agreement") entered into by DTSC and the Respondents that supersedes the O&M provisions of this Order as provided in

Confidential

Paragraph 6 below will be suspended so long as the Respondents comply with all requirements of this Order and other conditions described in the Amended FFA are met. In the event that EPA, in consultation with DTSC and RWQCB, determines that the Respondents are in Default as defined in Section XXXII of this Order or the O&M Agreement entered into by DTSC and the Respondents, the responsibility for any remaining response actions shall revert to the Navy in accordance with the terms and conditions of the Amended FFA.

4. Respondents represent that they are each bona fide prospective purchasers (“BFPP”) with respect to the Site as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that they have and will continue to comply with section 101(40) during their ownership of the Site, and thus qualify for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Site. In view, however, of the complex nature and significant extent of the Work to be performed by Respondents at the Site, and the risk of claims under CERCLA being asserted against Respondents notwithstanding section 107(r)(1) as a consequence of Respondents’ activities at the Site pursuant to this Order, one of the purposes of this Order is to resolve, subject to the reservations and limitations contained in Section XXVI (Reservations of Rights by EPA), any potential liability of Respondents under CERCLA for Existing Contamination, as defined in Paragraph 13 below.

5. EPA, DTSC, RWQCB and Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Fact, and Conclusions of Law and Determinations in Sections V and VI of this Order. Respondents agree to comply with and be bound by the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms.

6. The O&M provisions of this Order may be superseded by an Operations and Maintenance Agreement (“O&M Agreement”) entered into by Respondents and DTSC to address Long-Term Obligations if: (a) it has been concurred upon by EPA, (b) the Navy has been provided an opportunity to review and comment upon it in draft form, and (c) the O&M Agreement is in the form attached to this Order as Exhibit xx ((Navy Note: This is a reference to DTSC’s model O&M Agreement previously distributed by DTSC)) and includes but is not limited to: (i) identical definitions, scope of work, and terms and conditions relating to O&M requirements Long-Term Obligations consistent with those as set forth in this Order and the ETCA and (ii) equivalent procedures and criteria as set forth in this Order for addressing non-compliance and default determinations. after the Respondents have completed the initial development cover for all ROD Implementation Areas and passage of the second anniversary of EPA’s Certification of Completion of the Remedial Action for the final ROD Implementation Area pursuant to Paragraph 53. The O&M Agreement shall be in the form attached to this Order as Exhibit xxx, and shall include but not be limited to: 1) identical scope of work and terms and conditions

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

relating to O&M requirements as set forth in this Order and the ETCA and 2) equivalent procedures and criteria for addressing non-compliance and default determinations.

II. PARTIES BOUND

76. This Order applies to and is binding upon EPA, DTSC, RWQCB and upon Respondents and their successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this Order, except as provided in Paragraph 20.

87. Each Respondent shall be responsible for carrying out the activities required of it by the Statement of Work and this Order in a timely manner and shall be subject to stipulated penalties for its failure to meet the terms and conditions of this Order. A Respondent may be held responsible for carrying out activities required of the other Respondent under the Statement Scope of Work and this Order, but only after EPA, DTSC and RWQCB have exhausted their remedies under this Order against the non-performing Respondent; except that a Respondent shall respond immediately where EPA determines, in consultation with DTSC and RWQCB, that an immediate response is required to protect human health and the environment. Where this Order specifies that Respondents have a right or duty, but does not specify which respondent has that right, or duty, the Respondents may designate a single Respondent to exercise that right or perform that duty.

98. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order by their contractors, subcontractors and representatives.

109. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondents to this Order.

III. STATEMENT OF PURPOSE

110. In entering into this Order, the objectives of EPA, DTSC, RWQCB and Respondents, in addition to the purpose identified in Paragraph 4 above, are: (a) to perform Environmental Services and other activities required under this Order including but not limited to provide for the construction and implementation of the selected remedial actions consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), including ~~the obligation to implement and maintain institutional controls, including land use covenants, or operation and maintenance at the Site~~ Long-Term Obligations to achieve all applicable or relevant and appropriate requirements not waived ("ARARs"), and other Remedial

Confidential

Action Objectives described in the -RODs; (b) to provide for the payment of response and oversight costs incurred by EPA, DTSC and RWQCB with respect to this Order, provided that neither EPA, DTSC, nor the RWQCB will seek reimbursement from Respondents for any response and oversight costs already paid to them from a Department of Defense funding source; and (cde) to fulfill a portion of the required assurances under the CERCLA 120(h)(3)(C) covenant deferral process.

12. The Work conducted under this Order is subject to approval by EPA, after consultation with DTSC, RWQCB, and the Navy. For purposes of this Order, consultation with DTSC, RWQCB, and the Navy shall include, but not be limited to, simultaneous receipt by and a reasonable opportunity to review and comment on by DTSC, RWQCB, and the Navy of all documents and deliverables required to be submitted by Respondents under this Order (the reasonable review time for each document/deliverable will be determined by EPA in consultation with DTSC and the RWQCB before or upon receipt of the document/deliverable; opportunity to participate in all meetings among the Parties concerning the Site; and to participate in dispute resolution as provided by Sections XXII and XXIII of this Order. Respondents shall conduct all Work under this Order in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures and applicable State law.

~~Retained to acknowledge ongoing discussions regarding Navy role; however EPA believes this language is not required in AOC~~

IV. Definitions

13. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Area Covered by Environmental Services" or "ACES" shall mean that area identified on the map in Exhibit xx, and specifically excludes IR Sites 7/18 and the **radiologically-impacted area around Building 140**.

"Amended FFA" shall mean Amendment No. 1 to the Hunter's Point Naval Shipyard Federal Facilities Agreement, dated _____.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Certification of Completion of Remedial Action" shall mean a certification issued for a ROD Implementation Area after approval of a RACR pursuant to Paragraph 53.c or a certification for the entire Site issued pursuant to Paragraph 53.d.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

"Covenant Deferral Request" shall mean the document prepared in accordance with CERCLA Section 120(h)(3)(C), which provides the basis for the deferral by EPA, with the concurrence of the State, of the CERCLA covenant with respect to the Site.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Order, where the last calendar day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next working day.

"DTSC" shall mean the Department of Toxic Substances Control and any successor departments or agencies of the State.

"DTSC Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that DTSC incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, costs to ~~or implement~~ institutional controls, including land use covenants, or operation and maintenance, Long-Term Obligations including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls Long-Term Obligations including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by DTSC in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order

"Effective Date" shall be the effective date of this Order as provided in Section XXXX.

"Environmental Condition(s)" means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:

- a. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 et seq.;
- b. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.;
- c. California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 et seq.);
- d. California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 et seq.);
- e. Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.);
- f. Or similar federal or state environmental law

"Environmental Services" ~~[COPY FINAL VERSION FROM ECTA] shall mean the performance of the activities necessary to achieve Regulatory Closure and comply with Long-Term Obligations including but not limited to those required to comply with the RODs and associated Remedial Design reports and CERCLA, consistent with the NCP, with respect to (i) Known Conditions and Unknown Conditions Discovered During~~

Formatted: Font: Bold, Italic

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

~~the Course of Remediation even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation, but only to the extent such activities are covered funded by the Environmental Insurance Policies or to the extent such funding is unavailable as a result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.~~

The term "Environmental Services" does not include, except as specifically provided herein, the performance of any activities related to ~~the following:~~ Navy Retained Conditions; or Special Exclusions.

"Environmental Insurance Policies" shall mean the environmental insurance which Respondents shall procure in accordance with the ETCA

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Future Response Costs" shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of establishing and maintaining the administrative record for this Order, or participating in community relations meetings, the costs-incurred pursuant to Section XII (Access and ~~Institutional Land Use~~ Controls), including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement ~~institutional controls~~Land Use Controls including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by EPA in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order.

"ETCA" shall mean the Early Transfer Cooperative Agreement entered into by the Navy and the San Francisco Redevelopment Authority, San Francisco, California for the Site, dated ____, and attached hereto as Exhibit ____.

"Existing Contamination" shall mean:

- 1) any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the Effective Date;
- 2) any hazardous substances, pollutants or contaminants that migrated from the Site prior to the Effective Date; and
- 3) any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

Existing Contamination includes, but is not limited to, Navy-Retained Conditions.

Confidential

"FFA" or "Amended FFA" shall mean the Hunter's Point Naval Shipyard Federal Facilities Agreement, dated January 22, 1992, and any amendments thereto.

"Further Response Actions" means any removal or remedial action selected by the Navy and/or EPA which addresses Environmental Conditions not specifically addressed in the CERCLA RODs but which are within the definition of Environmental Services and are not Navy Retained Conditions or Special Exclusions.

"Hunter's Point Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Institutional Controls" ~~[COPY FINAL VERSION FROM ECTA] shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.~~

"Known Condition" shall mean ~~one or more specified chemicals of concern in a specified medium (e.g., soil, soil gas, or groundwater) an Environmental Condition identified in the CERCLA RODs as requiring remedial action of one or more specified chemicals of concern in a specified medium (e.g., soil or groundwater) at one or more specified Installation Restoration (IR) site or other specified location.~~

"Land Use Controls" or "LUCs" ~~[COPY FINAL VERSION FROM ECTA]~~

~~"Long Term Obligations" [COPY FINAL VERSION FROM ECTA] shall mean any long term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required to be performed subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action that has been approved pursuant to this Order or a related Operations and Maintenance Agreement with DTSC including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports, and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five year reviews thereafter. Long Term Obligations does not include obligations attributable to NRCs or Special Exclusions.~~

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Navy Retained Conditions shall mean Unexploded Ordnance (as defined in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of the ETCA.

"Operation and Maintenance" or "O & M" ~~[COPY FINAL VERSION FROM ECTA] shall mean all activities required to maintain the effectiveness of the Remedial Action(s) as required by EPA, in consultation with DTSC and RWQCB, pursuant to this Order, or any O&M Agreement between DTSC and Respondents that supersedes the Order, subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action.~~

"Operation and Maintenance Agreement" or "O&M Agreement" ~~[COPY FINAL VERSION FROM ECTA] shall mean any Operations and Maintenance Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of this Order.~~

"Operation and Maintenance Plan" [COPY FINAL VERSION FROM ECTA]

"Order" shall mean this Administrative Order on Consent, the SOW, all appendices attached hereto (listed in Section XXXVI) and all documents incorporated by reference into this document, including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper case letter.

"Parties" shall mean EPA, DTSC, RWQCB and Respondents.

"Pollution Conditions" shall have the meaning set forth in the Environmental Insurance Policies.

"RACR" shall mean a report prepared pursuant to the *DoD/EPA Joint Guidance, Remedial Streamlined Site Closeout and NPL Deletion Process for DoD Facilities* demonstrating that (1) the remedy at a ROD Implementation Area has been fully performed, including recordation of a modification to the LUC(s), if required by EPA; (2) initial implementation of any other institutional controls called for in the ROD, and (3) the Remedial Action Objectives have been attained.

"Radiological Materials" shall mean solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides other than being handled as household hazardous waste.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision(s)" or "ROD(s)" shall mean that certain CERCLA Amended Record of Decision for Parcel B dated January 14, 2009 and that certain CERCLA Record of Decision for Parcel G dated February 18, 2009 including all attachments thereto. The term "Record of Decision(s)" or "ROD(s)" shall not include any amendment, modification or supplement to the above-referenced Records of Decision except to the extent required as the result of any negligent act or omission of Respondents or their contractors.

"Regulatory Closure" shall mean Environmental Regulatory Agency approval by issuance of one or more Certifications of Completion for CERCLA response actions that collectively address the entire ACES (or encompassing the portion of the ACES or particular condition with respect to which the term is used) pursuant to the procedures set forth in the AOC and, to the extent the Environmental Services includes activities not covered by the AOC, such as certain petroleum releases, written Environmental Regulatory Agency approval that no further action is required for that condition.

"Regulatory Enforcement Activities" shall mean any regulatory enforcement costs that are not allowable costs under 10 U.S.C. 2701(d)(3), including activities associated with EPA, DTSC, RWQCB, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking or preparing to take judicial enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

"Regulatory Oversight" includes all activities performed by EPA, DTSC, and RWQCB necessary to oversee the implementation of the AOC, other than Regulatory Enforcement Activities.

~~"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Respondents to implement each of the RODs in accordance with the SOW and the Remedial Design and Remedial Action Work Plans and other plans approved by EPA, after consultation with DTSC and RWQCB.~~

"Remedial Action Completion Report" or "RACR" [COPY FINAL VERSION FROM ECTA]

"Remedial Action Objective" shall mean the numeric or narrative clean-up standard specifically designated in a ROD as the "remedial action objective" for a particular remedy selected in the ROD.

"Remedial Action Work Plan" shall mean the document(s) developed pursuant to Paragraph ~~29-22~~ of this Order and approved or modified by EPA, after consultation with DTSC and RWQCB, and any amendments thereto.

"Remedial Design Package Report(s)" [COPY FINAL VERSION FROM ECTA]

~~"Remedial Designs" shall mean that certain Remedial Design for Parcel B dated _____ and that certain Remedial Design for Parcel G dated _____.~~

"Remedy Failure" shall mean any circumstance, not due to negligence by SFRA, where a remedy selected in the CERCLA RODs or subsequent CERCLA decision document issued by the Navy has been implemented by SFRA in accordance with the CERCLA decision document and approved remedial/removal design documents but is determined by EPA not to have achieved the CERCLA decision document's remedial/removal action objectives.

"Risk Management Plans" or "RMPs" shall mean that certain Pre-RACR Risk Management Plan dated _____, and that certain Post-RACR Risk Management Plan dated _____, and any subsequent amendments thereto.

"ROD Implementation Area" shall mean the portions of Parcels B and G identified in Exhibit _____, attached hereto, as that Exhibit may be amended from time to time with the approval of EPA, in consultation with DTSC and the RWQCB, which form the geographic units for which Respondents will seek certification of completion pursuant to Section XVII

"RWQCB" shall mean the Regional Water Quality Control Board, San Francisco Bay Region, and any successor agencies of the State.

"RWQCB Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the RWQCB incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure costs to establish or implement ~~institutional controls~~ Long-Term Obligations, including, but not limited to, the amount of just compensation, ~~costs for emergency response~~, or the costs incurred by the RWQCB in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order ~~;~~

"Section" shall mean a portion of this Order identified by a Roman numeral.

"Site" shall mean that portion of the Hunter's Point Naval Shipyard Superfund Site which Respondents have agreed to remediate in accordance with this Order, encompassing ~~approximately 80~~ acres, described in Appendix A and depicted generally on the map attached as Appendix B. The scope of the "Site" shall be the same as the "Area Covered by Environmental Services" as that term is defined in the ETCA

“Special Exclusions” means any of the following:

a. Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and G CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

1. The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;

2. Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Navy Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs b through e of this Section;

b. Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.

c. Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

d. The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.

e. Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

"State" shall mean the State of California.

"State Interest" shall mean the interest rate applied to outstanding payments for costs billed pursuant to California Health and Safety Code section 25360.1. The rate of interest is subject to change.

"Statement of Work" or "SOW" shall mean the statement of work required of each Respondent for implementation of one or more Remedial Design(s) and Remedial Action(s) the Site, as set forth in Appendix C to this Order and any modifications made in

Confidential

accordance with this Order. The Statement of Work shall identify, for each element of Work, which Respondent is responsible for performing that element.

"Supervising Contractor" shall mean the principal contractor retained by the Respondents to supervise and direct the implementation of the Work under this Order.

"Unknown Conditions Discovered During the Course of Remediation" shall mean Environmental Conditions that are discovered in the course of implementing the requirements of the CERCLA RODs in a portion of the Site that has not achieved Regulatory Closure, and are not Known Conditions, Special Exclusions, or Navy Retained Conditions.

"Unknown Conditions Discovered Outside the Course of Remediation" shall mean Environmental Conditions other than Known Conditions and Unknown Conditions Discovered During the Course of Remediation.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any "hazardous waste" under California Health and Safety Code section 25117, or "hazardous substance" under California Health and Safety Code section 25316; and (5) any "waste" under California Water Code section 13050.

"Work" shall mean performance of Environmental Services and all activities Respondents are required to perform under this Order, except those required by Section XXXV (Retention of Records). Work includes, but is not limited to, implementation and ~~operation~~ Operation and ~~maintenance~~ Maintenance of the remedies selected in the Amended Parcel B ROD and the Parcel G ROD

Alternate definition for discussion

~~Work" shall mean all activities Respondents are required to perform under this Order, except those required by Section XXXV (Retention of Records). Work includes, but is not limited to, implementation and operation and maintenance of the remedies selected in the Amended Parcel B ROD and the Parcel G ROD as more fully defined as Environmental Services in the ETCA and this Order.~~

V. FINDINGS OF FACT

14. Hazardous substances that have been released or that have the potential to be released within the Site include, but may not be limited to, metals, volatile organic compounds (VOC), semivolatile organic compounds (SVOC), pesticides, polychlorinated biphenyls (PCB), and radionuclides. Concentrations of a group of metals, especially arsenic and manganese, consistently exceeded remediation goals at locations across

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

Parcels B and G. These ubiquitous metals are addressed by eliminating the exposure pathway with a cover. Groundwater contaminants which include VOCs, especially trichloroethene (TCE) and its degradation product vinyl chloride, pose a risk from exposure via vapor intrusion into buildings.

On January 22, 1992, the EPA, State of California Department of Health Services (“DHS”) (now DTSC), and the Navy entered into a Federal Facilities Agreement requiring the Navy to identify, perform and complete all necessary response actions, including operation and maintenance at the former Hunter’s Point Naval shipyard under CERCLA.

The Site contains 16 known Installation Restoration Program sites (“IRP sites”). The Navy has signed a Record of Decision and an Amended Record of Decision to select a remedy for the IRP sites.

The former Hunter’s Point Naval Shipyard was selected in 1992 for Base Realignment and Closure and was officially closed in 1974.

The SFRA has requested an early transfer of the Site, which it has or will acquire, upon EPA’s approval of and the State’s concurrence on the Covenant Deferral Request. All of the response actions undertaken by Respondents shall be performed under this AOC, as determined by EPA, with DTSC and RWQCB concurrence, pursuant to CERCLA and the NCP.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting this Order, EPA has determined that:

a. The former Hunter’s Point Naval Shipyard is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Waste Materials as defined in Section IV of this Order.

c. Respondents are each “persons” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in Paragraph 14 above constitute an actual or threatened release of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or a release of Waste Material, as defined in Section IV of this Order.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

e. The response actions required by this Order are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. ADMINISTRATIVE ORDER

16. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondents shall comply with the provisions of this Order, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VIII. GENERAL PROVISIONS

17. Commitments by Respondents.

Respondents shall ~~finance, through the funds provided by the Navy pursuant to the ETCA, any proceeds from the Environmental Insurance Policies, and Respondents' SFRA's funds for Known Conditions and Unknown Conditions Discovered in the Course of Remediation to the extent not covered by ETCA funds and insurance proceeds, and shall~~ perform the Work in accordance with this Order and any O&M Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of the Order, the SOW, the Records of Decision, and other decision documents applicable to the Site and associated with the Records of Decision, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Respondents and approved by EPA, in consultation with DTSC and RWQCB, pursuant to this Order and any subsequent O&M Agreement. Respondents shall also reimburse EPA, DTSC and RWQCB for their respective Future Response Costs as provided in this Order.

18. Compliance with Applicable Law.

All activities undertaken by the Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of federal and state environmental laws as set forth in the ROD(s) and the SOW. The activities conducted pursuant to this Order, if approved by EPA, shall be considered to be consistent with the NCP.

19. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

contamination and necessary for implementation of the Work) and where such remedial action is selected and carried out in compliance with Section 121 of CERCLA. Where any portion of the Work that is not on Site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits and approvals.

b. The Respondents may seek relief under the provisions of Section XXI (Force Majeure) of this Order for any delay in the performance of the Work resulting from a failure to obtain, or delay in obtaining, any permit required for the Work.

c. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

20. Conveyance of Site.

a. At least 30 days prior to the conveyance of a fee interest or leasehold interests in excess of 20 years to any portion of the Site, Respondents shall give written notice to EPA, DTSC, and RWQCB of the proposed conveyance, including the name and address of the grantee. Nothing in this Order shall be construed to require Respondents to secure the approval of EPA, DTSC, or RWQCB before transferring such interest

b. In the event of any such conveyance, Respondent's obligations under this Order shall be unaffected unless EPA, in consultation with DTSC and RWQCB, approves the transfer of the obligations of Respondents under this Order to a successor. EPA's decision under this Paragraph 20.b. is in its sole discretion and shall not be subject to dispute resolution or judicial review. EPA will consider the following criteria, among others, in approving or disapproving a proposed successor for the Work under this Order: (i) the technical qualifications of the successor, or its proposed consultant, to perform remaining Work obligations; (ii) financial ability to perform such obligations; (iii) the successor's legal status and legal authority to sign the Order; (iv) the proposed successor's willingness to sign the Order without modification; and (v) assurance that the proposed transfer of Work obligations will not hinder or delay completion of the Work. If EPA, in consultation with DTSC and RWQCB approve a successor for the Work under this Order, EPA, DTSC, and RWQCB may also provide covenants not to sue for the successor similar to those provided in Paragraphs 87 and 90 of this Order.

IX. PERFORMANCE OF THE WORK BY RESPONDENTS

21. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Respondents pursuant to Sections IX (Performance of the Work by Respondents), X (Remedy Review), XI (Quality Assurance, Sampling and Data Analysis), and XVIII (Emergency

Response) of this Order shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after consultation with DTSC and RWQCB. Respondent *CP/HPS Development Company* has proposed to use MACTEC as its Supervising Contractor and provided EPA, DTSC and RWQCB with the information meeting the criteria described in subparagraph b. below, including its qualifications and Quality Management Plans. MACTEC is not disapproved. **NOTE: MACTEC to submit necessary information for review.**

b. If at any time in the future, Respondents propose to change its Supervising Contractor, Respondents shall notify EPA, DTSC, RWQCB, and the Navy in writing at least sixty (60) days in advance of such change, and must obtain an authorization to proceed from EPA, after consultation with DTSC, ~~and~~ RWQCB, ~~and the Navy~~, before the new Supervising Contractor performs, directs, or supervises any Work under this Order. Respondents must provide the name, title, and qualifications of any contractor proposed to be Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/241/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA, after consultation with DTSC, ~~and~~ RWQCB, ~~and the Navy~~, will issue a notice of disapproval or an authorization to proceed.

c. If EPA disapproves a proposed Supervising Contractor, EPA will notify Respondents in writing. Respondents shall submit to EPA, DTSC and RWQCB a list of contractors, including the qualifications of each contractor that would be acceptable to them, within 30 days of receipt of EPA's disapproval of the contractor previously proposed. After consultation with DTSC and RWQCB, EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondents may select any contractor from that list that is not disapproved and shall notify EPA, DTSC and RWQCB of the name of the contractor selected within 21 days of EPA's authorization to proceed.

d. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Respondents from meeting one or more deadlines in a plan approved by the EPA pursuant to this Order, Respondents may seek relief under the provisions of Section XXI (Force Majeure).

22. Remedial Action. With respect to each remedial action, the following procedures and requirements shall apply:

Confidential

a. Within [REDACTED] days of the Effective Date of this Order, Respondents shall submit to EPA, DTSC, ~~and~~ RWQCB, and the Navy a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the relevant ROD and achievement of the Remedial Action Objectives, in accordance with the ROD, this Order, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA after consultation with DTSC, ~~and~~ RWQCB, and the Navy. If the EPA's lead Remedial Project Manager approves a Remedial Action Work Plan and the Navy disapproves that work plan, the EPA Region IX Director of Federal Facilities shall make the final determination regarding whether to approve or disapprove the RAWP. Upon its final approval ~~by EPA~~, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order. At the same time as the Remedial Action Work Plan is submitted, Respondents shall submit to EPA, DTSC and RWQCB a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following which among other things shall provide for the complete initial installation of surface cover for all portions of the site for which RODs require a surface cover remedy no later than seven years after the Effective Date of this order: (1) schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) methods for satisfying permitting requirements (4) methodology for implementation of the Operation and Maintenance Plan; (5) methodology for implementation of the Contingency Plan; (6) tentative formulation of the Remedial Action team; (7) construction quality control plan (by constructor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Respondents' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon final approval of the Remedial Action Work Plan ~~by EPA, after consultation with DTSC and RWQCB~~, Respondents shall implement the activities required under the Remedial Action Work Plan. The Respondents shall submit to EPA, DTSC, ~~and~~ RWQCB, and the Navy all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondents shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

23. The Respondents shall continue to implement the Remedial Action and Operation and Maintenance, and Long-Term Obligations, until the Remedial Action

Confidential

Objectives are achieved and for so long thereafter as is otherwise required under this Order and any O&M Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of the Order and the ROD.

24. Respondents acknowledge and agree that nothing in this Order, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by EPA, DTSC or RWQCB that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Remedial Action Objectives.

25. Except as expressly provided in the SOW (NOTE to allow for revetment wall work) Respondents are not required to perform any Work under this Order on any property that is outside the boundaries of the Site or any Work associated with release of hazardous substances that have migrated onto, under or in the Site from a source outside the Site subsequent to the Effective Date of this AOC.

26. Waste Shipments.

a. For any Work performed under this Order, Respondents shall comply with all applicable State waste management laws.

b. For any Work performed under this Order, Respondents shall, prior to any shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA, DTSC and RWQCB Project Coordinators of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments to out-of-state waste management facilities when the total volume of all such shipments will not exceed 10 cubic yards.

c. The Respondents shall include in the written notification for out-of-state waste shipments the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

d. The identity of the receiving facility and state will be determined by the Respondents following the award of the contract for Removal Action or Remedial Action construction. The Respondents shall provide the information required by Paragraph 24.c. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

27. Off-Site Waste Shipments. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. If the off-Site location is in California, Respondents shall obtain certification from the State that the proposed receiving facility is in substantial compliance with California laws. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provisions and regulations cited in the preceding sentences.

X. Remedy Review

28. Periodic Review.

For the duration of this Order, Respondents shall conduct any studies and investigations as requested by EPA, after consultation with DTSC and RWQCB, in order to permit EPA and/or the Navy to conduct reviews of whether any Remedial Action(s) is(are) protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

29. Selection of Further Response Actions.

If EPA and the Navy determine, at any time, after consultation with DTSC and RWQCB, that any Remedial Action at the Site is not protective of human health and the environment, EPA and the Navy may select ~~further~~ Further response Response actions Actions for the Site in accordance with the requirements of the FFA ~~and~~ CERCLA and consistent with the NCP (~~"Further Response Actions"~~).

a. Opportunity to Comment. For the duration of this Order, Respondents and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA and the Navy and to submit written comments for the record during the comment period.

b. Limitations on Respondents's Obligation to Perform Further Response Actions. If EPA and the Navy select Further Response Actions for the Site, the Respondents shall have no obligation to undertake ~~such Further Response Actions~~ any additional actions ~~to the extent that such Actions are required as a result of Navy Retained Conditions or Exclusion~~ to the extent such Actions are not part of the Environmental Services. Any requirement that Respondents undertake Further Response Actions shall be subject to Respondents' right to dispute resolution in accordance with Section XXIII. [NOTE: "Further Response Actions" would be a defined term in Section 13.] b. Limitations on Respondents' Obligation to Perform Further Response Actions: If EPA and the Navy select Further Response Actions for the Site, the Respondents shall have no obligation to undertake such Further Response Actions unless the conditions or actions are within the definition of Environmental Services. Any requirement that

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Respondents undertake Further Response Actions shall be subject to Respondents' right to dispute resolution in accordance with Section XXIII.

c. Submissions of Plans. If Respondents are required to perform further response actions pursuant to Paragraph 29.b., Respondents shall submit a plan for such work to EPA and the Navy for approval, in accordance with the procedures set forth in Section IX (Performance of the Work by Respondents) and shall implement the plan approved by EPA and the Navy, after consultation with DTSC and RWQCB, in accordance with the provisions of this Order.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

30. Respondents shall use quality assurance, quality control, and chain of custody procedures for all assessment, characterization, treatability, design, compliance and monitoring samples in accordance with "Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) (EPA/505/B-04-900A, March 2005), "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Order, Respondents shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and relevant guidance. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Order. Respondents shall ensure that EPA, DTSC and RWQCB personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA, DTSC or RWQCB pursuant to the QAPP for quality assurance monitoring. Respondents shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988 (collectively, "CLP-approved methods"), and any amendments made thereto during the course of the implementation of this Order; however, upon approval by EPA, after consultation with DTSC and RWQCB, the Respondents may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Respondents shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program. Respondents shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA after consultation with DTSC and RWQCB. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

31. Upon request, the Respondents shall allow split or duplicate samples to be taken by EPA, DTSC or RWQCB or their authorized representatives. Respondents shall notify EPA, DTSC and RWQCB not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA, after consultation with DTSC and RWQCB. In addition, EPA, DTSC and RWQCB shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow the Respondents to take split or duplicate samples of any samples it takes as part of the EPA's oversight of the Respondents' implementation of the Work.

32. Respondents shall submit to EPA, DTSC and RWQCB two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Order unless EPA agrees otherwise, after consultation with DTSC and RWQCB.

33. Notwithstanding any provision of this Order, the United States and the State, including DTSC and RWQCB, hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XII. ACCESS AND ~~INSTITUTIONAL~~ LAND USE CONTROLS

34. As anticipated in the covenant deferral process, ~~certain restrictions on land/soil and groundwater use~~ **Land Use Controls** are required to assure protection of human health and the environment at the time of transfer of the Site, prior to and during the implementation of response actions at the Site. Accordingly, the Navy, EPA, DTSC and RWQCB have prepared, in consultation with Respondents, ~~land use covenants ("LUCs")~~ **Covenants to Restrict Use of Property ("CRUPs")** consistent with the requirements of the RODs for Parcels B and G, and Respondents have prepared, and EPA, ~~the Navy,~~ DTSC and RWQCB have approved the Risk Management Plans.

Formatted: Tab stops: 0.5", Left

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

a. Respondents shall comply with the use restrictions set forth in the LUCs except to the extent Respondents obtain the approval of Navy, DTSC, EPA and RWQCB to allow an otherwise restricted use or activity pursuant to the approval procedures set forth in the LUCs or Risk Management Plans, respectively.

b. Respondents shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of remedial measures and response actions to be performed pursuant to this Order and/or in accordance with the RODs.

35. Respondents shall provide the United States, including EPA and the Navy, and DTSC and RWQCB, and their representatives and contractors, with access at all reasonable times to the Site, for the purpose of conducting any activity related to this Order including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA, DTSC and RWQCB;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for planning or implementing response actions or additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing any response actions or the Work in the event of Default by Respondents;
- (8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Respondents or its agents, consistent with Section XXXIII (Access to Information);
- (9) Assessing Respondents' compliance with this Order; and
- (10) Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by, or pursuant to this Order.

36. If EPA determines, after consultation with DTSC and RWQCB, that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement any remedies selected in the RODs, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondents shall cooperate with EPA's efforts to secure such governmental controls.

37. Notwithstanding any provision of this Order, the United States and the State, including DTSC and RWQCB, retain all of their access authorities and rights, as well as

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XIII. REPORTING REQUIREMENTS

38. In addition to any other requirement of this Order, Respondents shall submit an electronic copy of monthly progress reports to EPA, DTSC and RWQCB that: (a) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Respondents or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Order completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Respondents has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Respondents shall submit these progress reports to EPA, DTSC and RWQCB by the tenth day of every month following the Effective Date of this Order until EPA notifies the Respondents pursuant to Section XVII (Certification of Completion). If requested by EPA, DTSC or RWQCB, Respondents shall also provide briefings for EPA, DTSC and RWQCB to discuss the progress of the Work.

39. The Respondents shall notify EPA, DTSC and RWQCB of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

40. Upon the occurrence of any event during performance of the Work that is required to be reported pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), the Respondent owning the property where the event occurred shall within 24 hours of the onset of such event orally notify the EPA, DTSC and RWQCB Project Coordinators or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 9, United

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

41. Within 20 days of the onset of such an event, the Respondent owning the property where the event occurred shall furnish to EPA, DTSC and RWQCB a written report, signed by that Respondent's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, that Respondent shall submit a report setting forth all actions taken in response thereto.

42. Discovery of ~~Unknown~~Unexpected Environmental Condition.

a. If Respondent, or its contractors discover or receive actual notice of an ~~Unknown~~Environmental Condition during the conduct of the remedial action~~Respondents shall notify EPA, DTSC and RWQCB within thirty (30) calendar days of discovering, or receiving actual notice of, any Environmental Condition at, or affecting the Site, other than an event or condition covered by the requirements of Paragraph 56 (Emergency Response), which Respondents assert is not within the definition of Environmental Services, including but not limited to physical structures potentially containing hazardous substances (tanks, drums, etc), abrasive blast material ("ABM"), or soil with visible or olfactory evidence of contamination, that Respondent has reason to believe is a Navy Retained Condition or Special Exclusion, soil disturbing activity shall be suspended and notice shall be given to EPA, DTSC, RWQCB and the Navy project coordinators as soon as reasonably possible. This notice shall be provided at the same time notice is given to the Navy pursuant to Section 301 of the ETCA. The Notice shall include the explanation/basis for Respondent's assertion and if the Navy fails to accept responsibility for the condition within 30 days of the Notice and shall indicate whether the Respondent believes that the Environmental Condition is within the definition of Environmental Services for which it is responsible or asserts that the condition is a Navy Retained Condition or Special Exclusion for which the Navy is responsible. The notice should include: (i) a brief description and electronic images of the condition, (ii) Respondent's initial assessment of the condition, (iii) any proposal for addressing the newly discovered condition including the scope of any further investigation that may be necessary to ascertain whether the discovery is within the scope of Environmental Services, and (iv) an explanation /basis for any assertion by the Respondent that the Environmental Condition is not within the definition of Environmental Services.~~

b. If the Respondent asserts, as provided in subparagraph 42.a, that the Navy is responsible for addressing the Environmental Condition because it is a Navy Retained Condition or Special Exclusion and the Navy does not agree with the Respondent's assertion within 30 days of receipt of the Notice, EPA, DTSC and RWQCB, shall meet with Respondents and the Navy and confer in an attempt to reach a mutually agreeable solution to address the circumstances, including, if appropriate agreeing to the scope of, and allocation of costs for, any further investigation that may be necessary to ascertain whether the discovery is within the scope of Environmental

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Services.

c. EPA, following consultation with DTSC, RWQCB, Respondents, and the Navy, and any further investigation as necessary, as provided in subparagraph 42.b, will determine in writing whether the newly discovered Unknown Environmental Condition falls within the definition of Environmental Services, Special Exclusions, or Navy Retained Conditions. EPA and the Navy, following consultation with DTSC and RWQCB, shall determine whether the condition falls within one or more of the following CERCLA procedural categories; (i) it is within the scope of the remedies selected in the RODs (including RMP requirements for maintenance and restoration of soil covers); (ii) it requires an ESD or ROD amendment, (iii) it is within the scope of an approved CERCLA removal action memorandum, or (iv) it requires the preparation of an action memorandum. If EPA determines that the condition falls within the definition of Environmental Services, Respondent shall address the Environmental Condition in accordance with the applicable RMP, subject to Respondent's rights to initiate the dispute resolution process as provided in Section 72.

d. If a mutually agreeable solution to address the Environmental Condition is not reached within 90 days of the Notice, EPA, in consultation with DTSC, and RWQCB, and the Navy, shall direct Respondents to address the Environmental Condition conduct the work unless EPA determines that the work is a Navy Retained Condition, or Special Exclusion. Respondents reserve the right to initiate the dispute resolution process as provided in Section 72 of this Order, which right shall also be available to the Navy.

d. If Respondent, or its contractors discover or receive actual notice of an unexpected Environmental Condition during the conduct of the remedial action, other than an event or condition covered by the requirements of Paragraph 56 (Emergency Response), including but not limited to physical structures potentially containing hazardous substances (tanks, drums, etc), or soil with visible or olfactory evidence of contamination, that Respondent believes is within the Scope of Environmental Services, Respondent shall (i) notify EPA, DTSC, RWQCB and the Navy, (ii) collect and analyze characterizations samples, and (iii) characterize and address the condition in accordance with the applicable RMP. All sampling and characterization data shall be submitted to EPA, DTSC, and RWQCB and performed in accordance with the applicable quality assurance standards, as provided in Section XI.

43. Each Respondent shall submit a hard copy and an electronic copy of all plans, reports, and data required by the SOW, each Remedial Design ~~Work Plan~~ Package Report, each Remedial Action Work Plan, or any other document ~~which~~ that respondent is required to submit under the Scope of Work to EPA in accordance with the schedules set forth in such plans. The submitting Respondent shall simultaneously submit copies of all such plans, reports and data the Respondent is required to submit under the Scope of Work to DTSC, ~~and~~ RWQCB, and the Navy. Upon request by EPA, DTSC, ~~or~~ RWQCB, or the Navy, the submitting Respondents shall submit in electronic form all portions of any report or other deliverable Respondents are required to submit pursuant to the provisions of this Order. All reports and other documents submitted by

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Respondents to EPA, DTSC RWQCB, and the Navy (other than the monthly progress reports referred to above) which purport to document Respondents' compliance with the terms of this Order shall be signed by an authorized representative of the Respondents.

XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

44. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Order, EPA, after consultation with DTSC, RWQCB, and the Navy shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the submitting Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the submitting Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

45. In the event of approval, approval upon specified conditions, or modification by EPA, pursuant to Paragraph 47, the submitting Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XXIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 46(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXIV (Stipulated Penalties).

46. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 44, the submitting Respondent shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXIV, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 54.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 44, the submitting Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XXIV (Stipulated Penalties).

47. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, after consultation with DTSC, RWQCB, and the Navy, EPA may again require the submitting Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. The submitting Respondent shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XXIII (Dispute Resolution).

48. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the submitting Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the submitting Respondent invokes the dispute resolution procedures set forth in Section XXIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXIII (Dispute Resolution) and Section XXIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIV.

49. All plans, reports, and other items required to be submitted to EPA, DTSC and RWQCB under this Order shall, upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

XV. PROJECT COORDINATORS

50. Within 20 days of the Effective Date of this Order, each Respondent, DTSC, RWQCB, the Navy, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Respondents' Project Coordinators shall be subject to disapproval by EPA, in consultation with DTSC, RWQCB, and the Navy, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Respondents' Project Coordinators shall not be attorneys for the Respondents in this matter. They may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during remedial activities.

51. EPA, DTSC, ~~and~~ RWQCB, and the Navy may designate other representatives, including, but not limited to EPA, DTSC ~~and~~ RWQCB, and Navy employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Order. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Order and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material. EPA's Project Coordinator, DTSC's Project Coordinator, RWQCB's Project Coordinator, the Navy's BRAC Environmental Coordinator or functional equivalent, and the Respondents' Project Coordinators will meet on a monthly basis or on such other schedule as they shall approve.

XVI. Assurance of Ability to Complete Work

52. EPA, DTSC and RWQCB hereby acknowledge that the funds provided by the Navy pursuant to the ETCA, and the Environmental Insurance Policies procured pursuant to the ETCA provide sufficient Financial Assurance of the Respondents' ability to complete the Work.

XVII. Certification of Completion

53. Certification of Completion of the Remedial Action. With respect to each ROD Implementation Area, the following procedures and requirements shall apply:

a. Within 90 days after Respondents conclude that the Remedial Action for a ROD Implementation Area and any additional response action required to address Unknown Condition Discovered in the Course of Remediation prior to issuance of a Certification of Completion ("additional response action") ~~has have~~ been either: (1) fully performed, including recordation of a modification to the LUC(s), if required by EPA, and initial implementation of any other ~~institutional controls~~ LUCs called for in the ROD or decision document for any additional response action, and the Remedial Action Objectives for the Remedial Action and response action objectives for any additional response action have been attained, or (2), for remedies involving long-term operation of a groundwater or soil vapor ~~remediation-intrusion mitigation~~ system, the system is constructed, in place, and is operating properly and successfully but the Remedial Action

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Objectives or additional response action objectives have not been attained, Respondents shall schedule and conduct a pre-certification inspection to be attended by Respondents, EPA, DTSC, RWQCB and the Supervising Contractor(s). If, after the pre-certification inspection, Respondents still believe that the Remedial Action and any additional response action have ~~has~~ been fully performed and the Remedial Action Objectives and additional response action objectives for such additional response action have been attained or for remedies involving long-term operation of a groundwater or soil vapor ~~remediation-intrusion mitigation~~ system, the system is constructed, in place and is operating properly and successfully but the Remedial Action Objectives have not been attained, Respondents shall, as applicable, submit to EPA for approval a RACR requesting Certification of Completion of Remedial Action, with a copy to the DTSC and RWQCB, pursuant to Section XIV (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a professional engineer registered in the State and Respondents' Project Coordinator shall state that the Remedial Action and any additional response action required for the ROD Implementation Area ~~has~~have been completed in full satisfaction of the requirements of this Order. The RACR shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible official of Respondents or the Respondents' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after consultation with DTSC and RWQCB, determines that the Remedial Action and any additional response action required for the ROD Implementation Area or any portion thereof ~~has~~have not been completed in accordance with this Order or that the Remedial Action Objectives and additional response action objectives for any additional response action have not been achieved, EPA will notify Respondents in writing of the activities that must be undertaken by Respondents pursuant to this Order to fulfill the requirements for obtaining a Certification of Completion of Remedial Action; provided however, that EPA may only require Respondents to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD and decision document for any additional response action. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require the Respondents to submit a schedule to EPA, DTSC and RWQCB for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to Respondents' right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

c. If EPA concludes, based on the initial or any subsequent RACR requesting Certification of Completion of Remedial Action and after consultation with DTSC and RWQCB, that the Remedial Action and any additional response action required has been performed in accordance with this Order and that the Remedial Action Objectives and additional response action objectives for any additional response action have been achieved, EPA will so certify in writing to Respondents. This certification shall constitute, as applicable, a Certification of Completion of Remedial Action or Certification of Completion of a ROD Implementation Area for purposes of this Order. Receipt of a Certification under this Paragraph 53 of Completion of the Remedial Action shall not affect Respondent's obligations under this Order to perform required actions other than those necessary to obtain the Certification.

d. After EPA has issued a Certification of Completion of Remedial Action for each ROD Implementation Area within the Site, EPA shall certify in writing to Respondents that the Remedial Action and any additional response action required for the entire Site has been performed in accordance with this Order and that the Remedial Action Objectives and additional response action objectives for any additional response action have been achieved for the entire Site. This certification shall constitute a Certification of Completion of Remedial Action for the Site.

54. NPL Deletion.

After EPA has issued a Certification of Completion of Remedial Action for all of ROD Implementation Areas comprising Parcel G and/or for all of the ROD Implementation Areas comprising the portion of Parcel B within the Site; EPA will consider a request to initiate the regulatory proceedings necessary to effectuate a Partial Deletion from the National Priorities List of Parcel G and/or the portion of Parcel B within the Site from the Hunters Point Naval Shipyard Superfund Site.

((Navy Note: Par. 55 has gone missing))

XVIII. EMERGENCY RESPONSE

56. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of hazardous substances at the Site that constitutes an emergency situation, or may present an immediate threat to public health or welfare or the environment, the Respondent that owns the property where the release has been caused or threatened shall, subject to Paragraph 57, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's, DTSC's, ~~and~~ RWQCB's, and the Navy's Project Coordinators. If EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator must be notified. If neither of these EPA persons is available, that Respondent shall notify the EPA Emergency Response Unit, Region 9. That Respondent shall take such actions in consultation with EPA's Project Coordinator or other available

Confidential

authorized EPA officer and in accordance with all applicable provisions of the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Respondents fail to take appropriate response action as required by this Section and EPA takes such action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP, pursuant to Section XIX (Payments for Response Costs).

57. Nothing in the preceding Paragraph or in this Order shall be deemed to limit any authority of the United States or the State, including DTSC and RWQCB, to a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, or b) direct or order such action, or seek an order from a Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIX. PAYMENTS FOR EPA FUTURE RESPONSE COSTS

58. The amounts to be paid by Respondents pursuant to Paragraph 59 shall be deposited in the HPNS Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

59. Payments for EPA Future Response Costs.

a. Respondents shall pay to EPA all EPA Future Response Costs not inconsistent with the National Contingency Plan. Except as provided in Paragraph 59.c below, EPA will send Respondents, on a periodic basis, a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 60. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and EPA Site/Spill ID Number #XXXXXX. Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

b. At the time of payment under Paragraph 69.a or 59.c, Respondents shall send notice that payment has been made to EPA and to the Regional Financial Management Officer, in accordance with Section XXXV (Notices and Submissions).

c. Within 30 days of the Effective Date, Respondents shall pay to EPA \$ [to be determined] in prepayment of anticipated EPA Future Response Costs. The total amount paid shall be deposited by EPA in the HPSHPNS Special Account, within the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA to conduct or finance future response actions. Respondents shall make the payment required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund, " referencing the name and address of the party making the payment, and EPA Site/Spill ID Number #XXXX Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

In the event that the payments required by this subparagraph are not made within 60 days of the Effective Date, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the thirtieth day following the Effective Date. The Interest shall accrue through the date of the Respondents' payment.

d. After EPA issues its written Certification of Completion of Work and EPA has performed a final accounting of EPA Future Response Costs, EPA shall offset the final bill for EPA Future Response Costs by any unused amount paid by the Respondents pursuant to Paragraph 59.a or Paragraph 59.c. Any amount in excess of amounts due to EPA shall be returned to Respondents.

60. Respondents may contest payment of any EPA Future Response Costs under Paragraph 59 if Respondents determines that EPA has made an accounting error or if Respondents alleges that a cost item that is included represents costs that are inconsistent with the NCP or if the cost is outside the definition of EPA Future Response Costs. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA pursuant to Section XXXV (Notices and Submissions). Any such objection shall specifically identify the contested EPA Future Response Costs and the basis for objection. In the event of an objection, the Respondents shall within the 30-day period pay all uncontested EPA Future Response Costs to EPA in the manner described in Paragraph 59. Simultaneously, the Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs. The Respondents shall send to EPA, as provided in Section XXXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested EPA

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondents shall initiate the Dispute Resolution procedures in Section XXIII (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, the Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 59. If Respondents prevail concerning any aspect of the contested costs, the Respondents shall pay that portion of the costs (plus associated accrued interest) for which Respondents did not prevail to the United States in the manner described in Paragraph 59; Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Respondents' obligation to reimburse EPA for its EPA Future Response Costs.

61. In the event that the payments required by Paragraph 59.a. are not made within 30 days of the Respondents' receipt of the bill, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the date of the bill.

62. Payment of DTSC Future Response Costs.

a. As of the Effective Date of this Order, Respondents shall pay all of DTSC's Future Response Costs related to the Work performed under this Order. DTSC will bill Respondents quarterly for its response costs. Respondents shall pay DTSC within sixty (60) days of date of invoice. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the invoice pursuant to California Health and Safety Code section 25360.1. All payments made by Respondents pursuant to this Order shall be by cashier's or certified check made payable to "DTSC," and shall bear on the face the project code of the Site (Site ____) and the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Order.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

b. If Respondents disputes a DTSC billing, or any part thereof, Respondents shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project manager and branch chief. If Respondents desires to formally request dispute resolution with regard to the billing, Respondents shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondents shall pay all costs which are undisputed in accordance with Subparagraph 62.a. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of DTSC interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Special Assistant for Cost Recovery and Reimbursement Policy
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this Order. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

63. Payment of RWQCB Future Response Costs

a. As of the Effective Date of this Order, the Respondents are liable for all of the RWQCB's costs related to the Work performed under this Order in responding to the hazardous materials at the Site. Cost recovery may be pursued by the RWQCB under CERCLA, California Health and Safety Code Sections 25187.2 and 25360, California Water Code Sections 13304 and 13365, or any other applicable state or federal statute or common law. The RWQCB will bill the Respondents quarterly for oversight activities performed by the RWQCB hereunder. The Respondents shall pay the RWQCB within sixty (60) days of receipt of the RWQCB's billing. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the billing pursuant to California Health and Safety Code section 25360.1. All payments made by the Respondents pursuant to this Order shall be by cashier's check or certified check made payable to the RWQCB and shall bear on the face the project code of the Site 2169.6032

b. Payments to the RWQCB shall be sent to:

State Water Resources Control Board
SCPSLIC Program
P.O. Box 944212
Sacramento, CA 94244-2120

Confidential

A photocopy of all payment checks shall also be sent to the person designated by the RWQCB to receive submittals under this Order.

c. If Respondents disputes a RWQCB billing, or any part thereof, Respondents shall notify the RWQCB's assigned project manager and attempt to informally resolve the dispute with the RWQCB's project manager and immediate supervisor. If Respondents desires to formally request dispute resolution with regard to the billing, Respondents shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondents shall pay all costs which are undisputed in accordance with Subparagraph 63.a. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of RWQCB interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Executive Officer
CA Regional Water Quality Control Board, San Francisco Bay
1515 Clay Street, Suite 1400
Oakland, CA 94612
Tel (510) 622-2300 Fax (510) 622-2460

A copy of the written request for dispute resolution shall also be sent to the person designated by the RWQCB to receive submittals under this Order. A decision on the billing dispute will be rendered by the Executive Officer ~~Mr. Landau~~, or his designee.

XX. INDEMNIFICATION AND INSURANCE

64. Respondents' Indemnification of the United States and State.

a. The United States does not assume any liability by entering into this agreement. Respondents shall indemnify, save and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. Further, the Respondents agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. Neither the United

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Order. Neither the Respondents nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Respondents notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 64.a. and shall consult with Respondents prior to settling such claim.

c. Nothing in this Paragraph 64 or Paragraph 65 shall be construed to waive or in any way limit any rights Respondents may have against the United States as a result of acts or omissions for which the United States Navy is responsible, including but not limited to rights under CERCLA or Section 330 of the FY 1992 National Defense Authorization Act, as amended or under the Conveyance Agreement for Hunters Point Shipyard between the United States Navy and SFRA on _____, or under any deed to be executed by the Navy for any portion of the Site. Nothing in this paragraph shall be construed or interpreted in a manner inconsistent with the indemnifications, waivers, and releases of liability in Section 711 of the ETCA.

65. Respondents waives all claims against the United States and the State, including DTSC and RWQCB, for damages or reimbursement or for set-off of any payments made or to be made to the United States or DTSC and RWQCB arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States and the State, including DTSC and RWQCB, with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays, provided, however, that nothing herein shall limit Respondents' right to claim that any delays caused by the United States and/or State, including the DTSC and RWQCB, constitute a force majeure event under this Agreement.

66. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary of EPA's last Certification of Completion of the Remedial Action applicable to the Site pursuant to Section XVII (Certification of Completion), comprehensive general liability insurance with limits of five (5) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States, DTSC, and RWQCB as additional insureds. In addition, for the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. Prior to commencement of the Work under this Order, Respondents shall

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

provide to EPA, DTSC and RWQCB certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrates by evidence satisfactory to EPA, DTSC and RWQCB that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXI. FORCE MAJEURE

67. "Force Majeure-" for purposes of this Order, is defined as any event arising from causes beyond the control of the Respondents, of any entity controlled by Respondents, or of Respondents' contractors, that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Without limitation, a court-ordered injunction or stop work order related to any Work required by this Order is considered to be a Force Majeure event. In addition, Respondents' inability to perform Work required under this Order due to the Navy's failure or delay in addressing a Navy Retained Condition, or any ~~other~~ breach of the ETCA by the Navy, shall be considered a Force Majeure event. The requirement that the Respondents exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include a failure to attain the Remedial Action Objectives or financial inability to complete the Work, except to the extent that a failure by the Navy to fund all or a portion of the ETCA delays or prevents performance of obligations under this Order that are funded by the ETCA. Except as otherwise provided in this Paragraph 67, "Force Majeure" shall not, except as set forth above, include any delays caused by any disputes between the Navy and/or Respondents or any successors in title to the Site. Any delays caused by disagreements between or among EPA, DTSC and/or RWQCB and/or the Navy, or any other regulatory agency with jurisdiction over any matter herein, shall be considered out of Respondents' control, shall be considered a Force Majeure event, and Respondents shall have no obligation under this Order to mitigate the effects of such Force Majeure event.

68. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a Force Majeure event, the Respondents shall notify ~~orally~~ EPA's Project Coordinator, DTSC's Project Coordinator, ~~and~~ RWQCB's Project Coordinator, and the Navy's Project Coordinator, or, in his or her absence, their Alternate Project Coordinators or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 9, within 48 hours of when Respondents first knew that the event might cause a delay. Within 14 days thereafter, Respondents shall provide in writing to EPA, DTSC ~~and~~ and

RWQCB, and the Navy an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondents' rationale for attributing such delay to a Force Majeure event if Respondents intend to assert such a claim; and a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondents shall include with any notice all available documentation supporting Respondents' claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

69. If EPA, after consultation with DTSC, RWQCB, and the Navy, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Order that are affected by the Force Majeure event will be extended by EPA, after consultation with DTSC, RWQCB, and the Navy, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with DTSC, RWQCB, and the Navy, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify the Respondents in writing of its decision. If EPA, after consultation with DTSC, RWQCB, and the Navy, agrees that the delay is attributable to a Force Majeure event, EPA will notify the Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

70. If the Respondents elect to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution), Respondents shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 67 and 68, above. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Order identified to EPA.

XXII. EPA, DTSC AND RWQCB DISPUTE PROCESS

71. If disagreements or disputes arise during the consultation process between EPA, DTSC and RWQCB under this Order, EPA, DTSC and RWQCB agree to use the process outlined in this Paragraph to resolve such disputes. EPA, DTSC and RWQCB shall, whenever possible, make decisions by consensus at the Project Coordinator level. In the event a consensus decision cannot be reached by the EPA, DTSC and RWQCB Project Coordinators concerning the approval of a document or deliverable required by this Order, a meeting or telephone conference shall be scheduled and held within five (5) days of DTSC and/or RWQCB raising the dispute among EPA, DTSC and RWQCB Project Coordinators and their immediate supervisors to reach a consensus decision. If consensus cannot be reached by the immediate supervisors, the dispute shall be immediately elevated to the EPA Region 9 Assistant Director of the Federal Facility and Site Cleanup Branch, the DTSC Supervising Hazardous Substances Engineer II, **xxxxx** Office, Brownfields and Environmental Restoration Program, and the RWQCB Section Chief, Site Cleanup Section, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed above in an attempt to resolve the dispute through consensus. If no consensus can be reached, the dispute shall be immediately elevated to the EPA Region 9 Director of the Superfund Division, the DTSC Deputy Director for Site Mitigation and Brownfields Reuse, and the RWQCB Executive Officer, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed in the previous sentence in an attempt to resolve the dispute through consensus. If no consensus can be reached, the decision applicable to Respondents shall be the final decision made by the EPA Region 9 Director of the Superfund Division. By agreeing to this decision making process, DTSC and RWQCB do not waive any right or claim each agency may have for relief, and reserve any authority they may have under federal or state law to require Waste Material cleanups compliant with such law.

XXIII. DISPUTE RESOLUTION

72. The dispute resolution procedures of this Section shall be utilized to resolve disputes between Respondents and EPA arising under or with respect to this Order prior to the exercise of any other rights or remedies Respondents may have under applicable law to object to or challenge a decision of any other Party to this order. The dispute resolution procedures of this Section shall also be utilized to resolve disputes between Respondents, ~~the Navy and/or~~ EPA relating to the issue of whether an Environmental Condition or action falls within the scope of Environmental Services or is a Navy Retained Condition or Special Exclusion following the completion of the notification and “meet and confer” procedures set forth in Paragraph 42. ~~In such cases, the procedures described below shall be followed with the addition of the Navy as a party to be provided the same notices and rights to participate as the Respondents.~~ However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of the Respondents that have not been disputed in accordance with this Section.

Confidential

73. Any dispute which arises under or with respect to an EPA decision under this Order shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Respondents sends the other Parties a written Notice of Dispute.

74. Statements of Position. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, except on disputes regarding DTSC or RWQCB Future Response Costs reimbursement, shall be final unless within 14 days after the conclusion of the informal negotiation period, Respondents (~~or the Navy in the case of a dispute relating to Navy retain conditions~~) invoke the formal dispute resolution procedures of this Section by serving on EPA (and the Navy or Respondents as appropriate), with copies concurrently provided to DTSC, RWQCB, and Navy, a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and all supporting documentation relied upon.

75. Within 21 days after receipt of the Statement of Position, EPA will serve on all other parties and the Navy its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 7 working days after receipt of EPA's Statement of Position, Respondents ~~and/or the Navy~~ may submit a Reply. DTSC and RWQCB may also file a Statement of Position for EPA's consideration on the disputed matter no later than 7 days from receipt of EPA's Statement of Position.

76. Following receipt of all statements to be submitted pursuant to Paragraphs 74 and 75, the Director of the Superfund Division, EPA Region 9 will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be final. The invocation of formal dispute resolution procedures under this section shall not restrict Respondents rights and remedies available under applicable law.

77. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondents under this Order, not directly in dispute, unless EPA, after consultation with DTSC and RWQCB, agrees otherwise. . In the event that the Respondents do not prevail on the disputed issue, stipulated penalties may be assessed and shall be paid as provided in Section XXIV (Stipulated Penalties). If respondents prevail on the dispute issue, the stipulated penalties shall be discharged.

XXIV. STIPULATED PENALTIES

78. A Respondent shall be liable for stipulated penalties in the amounts set forth in Subparagraphs 78.a. and b. to EPA, DTSC, and RWQCB, with 50% of such penalties to be paid to EPA and ~~530%~~ to DTSC and ~~20%~~ to RWQCB, for failure to comply with the requirements of this Order specified below, unless excused under Section XXI (Force Majeure). Payment of stipulated penalties to DTSC and RWQCB shall be split evenly, unless otherwise directed in the demand letter set forth in Paragraph 81. "Compliance" by a Respondent shall include completion of the activities required to be completed by that Respondent under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order. Except with respect to an emergency or other situation described in Section 56 above, a Respondent shall not be liable for the stipulated penalties set forth in this Section as a result of the failure of the other Respondent to comply with the Order.

a. Stipulated Penalty Amounts – Work, including Payment of Future Response Costs.

The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph (i):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th day
\$2,500	30th through 45th day
\$15,000	45th day and beyond

b. Compliance Milestones. The following shall constitute general categories of "compliance milestones" subject to stipulated penalties under Paragraph 78.a. Specific documents/actions within Paragraph 78.a.i.(1) – (7) shall be subject to the stipulated penalties set forth above to the extent such documents have been designated "critical path" documents by Respondents in each Monthly Progress Report and subject to approval by EPA.

- 1) Remedial Action Workplan
- 2) Operations and Maintenance Plan
- 3) Remedial Action Completion Report
- 4) Work Status Report
- 5) Late Payment of EPA, DTSC, or RWQCB Future Response Costs
- 6) Failure to comply with any use restrictions selected in the RODs

7) Failure to provide access pursuant to Paragraph 35

8)

c. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports, including the Annual GW monitoring Report, the Annual O & M Compliance Monitoring Report and Incident Reports, or other written documents not within the scope of Subparagraph 78.a.i. above, and any other violation of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 30th day
\$1,500	30th through 45th day
\$10,000	45th day and beyond

79. All penalties shall begin to accrue on the day performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency except as set forth in Paragraph 48; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 76 of Section XXIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Respondents' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute.— Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

80. All penalties accruing under this Section shall be due and payable within 30 days of the Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Attn: Region 9 Receivables, P.O. Box 37109M, Pittsburgh PA 15262-0001, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0941. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA, DTSC, and RWQCB as provided in Section XXXV (Notices and Submissions).

81. All payments to DTSC and RWQCB under this Section shall be due and payable within 30 days of the Respondents' receipt from DTSC and the RWQCB of a

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

demand for payment of the penalties, unless Respondents invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to DTSC under this section shall be paid by cashier's or certified check made payable to "DTSC," and shall bear on the face the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

All payments to RWQCB under this section shall be paid by certified or cashier's check(s) made payable to the State Water Resources Control Board Cleanup and Abatement Account and shall bear on the face the Docket number of this Order.

The check should be made payable to CA Regional Water Quality Control Board, San Francisco Bay in addition to the Docket number of the Order, the check should include "File 2169.6032"

The payment should be sent to:

CA Regional Water Quality Control Board, San Francisco Bay
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

82. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Order.

83. Penalties shall continue to accrue as provided in Paragraph 89 during any dispute resolution period. Any such penalties need not be paid until the following: If the dispute is resolved by agreement, or by a decision of EPA, accrued penalties determined to be owing shall be paid to EPA within 30 days of the agreement or the receipt of EPA's decision or order. If Respondents prevail on the disputed issue, the stipulated penalties shall be discharged.

84. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81.

85. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon

Confidential

which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Order.

86. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XXV. Covenant Not to Sue by EPA

87. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the continuing and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to EPA by the Respondents in this Order. Except as provided in paragraph 20, this covenant not to sue extends only to Respondents and does not extend to any other person.

XXVI. RESERVATIONS OF RIGHTS BY EPA

88. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

89. The covenant not to sue set forth in Section XXV above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

- a. claims based on a failure by Respondents to meet a requirement of this Order;
- b. liability based on Respondents' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this Order, or otherwise ordered by EPA, after signature of this Order by the Respondents;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments arising from negligent acts or omissions of the Respondents or their contractors;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site
- f. liability for violations of federal or state law which occur during or after implementation of Removal or Remedial Actions; and
- g. liability for additional response actions that EPA determines are necessary to achieve Remedial Action Objectives.

XXVII. DTSC AND RWQCB COVENANT NOT TO SUE

90. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, DTSC and RWQCB covenant not to sue or to take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the continuing and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to DTSC and RWQCB by the Respondents in this Order. Except as provided in paragraph 20, this covenant not to sue extends only to Respondents and does not extend to any other person.

XXVIII. DTSC AND RWQCB RESERVATIONS OF RIGHTS

91. The covenant not to sue by DTSC and RWQCB set forth in Section XXVII does not pertain to any matters other than those expressly identified therein. DTSC and

Confidential

RWQCB reserve, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including but not limited to:

(a) claims based on a failure by Respondents to meet a requirement of this Order;

(b) liability for costs incurred or to be incurred by the State that are not reimbursed by Respondents pursuant to this Order, except for Navy-Retained Conditions;

(c) liability for performance of response actions other than the Work approved under the Order performed by Respondents pursuant to this Order, except for Navy-Retained Conditions;

(d) criminal liability;

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(f) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site unless such waste material constitute Navy-Retained Conditions; and

(g) liability for violations of local, state or federal law or regulations.

XXIX COVENANTS BY RESPONDENTS

92. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, or the State, or its contractors and employees, with respect to Existing Contamination, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Work required by this Order; or

c. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

d. These covenants not to sue do not apply to any claim or cause of action Respondents may have against the United States as a result of acts or omissions for which the United States Navy is responsible, including but not limited to rights under CERCLA or Section 330 of the FY 1992 National Defense Authorization Act, as amended or under the Conveyance Agreement for Hunters Point Shipyard between the United States Navy and SFRA on _____, or under any deed to be executed by the Navy for any portion of the Site. Nothing in this paragraph shall be construed or interpreted in a manner inconsistent with the indemnifications, waivers, and releases of liability in the ETCA.

93. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 89 (b), (c), (d), ~~and~~ (f) and (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. Nothing in this Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d)

XXX. OTHER CLAIMS

95. By issuance of this Order, the United States, including EPA, the Navy and the State, including DTSC and RWQCB, assume no liability for injuries or damages to persons or Site resulting from any acts or omissions of Respondents.

96. This order shall not be construed to give rise to any right to judicial review, not otherwise provided by applicable law, of any action or decision by EPA pursuant to this Order, including selection of further response actions by EPA and the Navy

XXXI. CONTRIBUTION

97. Nothing in this Agreement precludes the United States, the State, or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Order, including any claim Respondents may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2),(3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

98. In the event of a suit or claim for contribution brought against Respondents, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1),

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

with respect to Existing Contamination (including any claim based on the contention that either Respondents is not a Bonafide Prospective Purchaser (“BFPP”), or has lost its status as a BFPP as a result of actions taken in compliance with this Order or at the directions of EPA’s RPM, the Parties agree that this Order shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Order. The “matters addressed” in this Order are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, DTSC, RWQCB or Respondents with respect to Existing Contamination.

99. In the event Respondents were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of actions taken in compliance with this Order or at the directions of EPA’s RPM, the Parties agree that this Order shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability for all response actions taken or to be taken and all response costs incurred or to be incurred by EPA, DTSC, RWQCB or by any other person with respect to Existing Contamination.

100. Respondents agree that with respect to any suit or claim brought by it for matters related to this Order they will notify EPA, DTSC, and RWQCB in writing no later than 60 days prior to the initiation of such suit or claim.

101. Respondents also agree that with respect to any suit or claim for contribution brought against it for matters related to this Order they will notify in writing EPA, DTSC, and RWQCB within 10 days of service of the complaint on it.

XXXII. NONCOMPLIANCE, STOP WORK AND DEFAULT DETERMINATIONS

102. Respondents shall perform and complete all necessary response actions at the Site (except for Navy-Retained Condition, Special Exclusions, or other activities outside of the Environmental Services) in accordance with the SOW, CERCLA, the NCP, ARARs not otherwise waived, and relevant guidance. The completion date for any scheduled activity or report may be extended for a period not to exceed 60 days upon written request, provided that such request is received at least 30 days prior to the scheduled completion date

103. Notices of Noncompliance and Stop Work. Following EPA’s determination, after consultation with DTSC, RWQCB, and the Navy, that Respondents have failed to comply with a requirement of this Order, EPA shall give Respondents

written notification of the same, with a copy to the Navy, DTSC, and RWQCB and describe the noncompliance (“Notice of Noncompliance”). EPA shall also give Respondents written notification that Respondents should stop work on all or any portion of its response action activities at the Site until EPA determines that Respondents have remedied such noncompliance (“Notice to Stop Work”). Upon receipt of a Notice to Stop Work, Respondents shall immediately stop work on all or any portion of its response action activities at the Site as specified in such notice, and shall remedy the noncompliance. Respondents shall resume such response action activities only upon receipt of written notification from EPA, after consultation with DTSC, RWQCB, and the Navy, that Respondents may proceed with such activities as specified in the notification.

104. Finding of Default. EPA, after consultation with DTSC, RWQCB, and the Navy, may determine that a Default has occurred in one or more of the following situations: (i) EPA has issued to Respondents two or more Notices of Noncompliance for significant noncompliance, with or without accompanying Notices to Stop Work, pursuant to Paragraph 103; (ii) EPA determines that either Respondent is implementing the Work in a manner that may cause endangerment to human health or the environment; (iii) EPA determines that either Respondent has effectively ceased to perform all or a portion of the Work for any reason, including lack of Navy funding through the ETCA, except for a Force Majeure event pursuant to Section XXI that results in only a temporary delay in performance; (iv) either Respondent misappropriates or misuses funds received under the ETCA; or (v) Respondents are substantially and consistently deficient or late in their performance of the Work. Prior to issuance of a Finding of Default, EPA shall provide Respondents in writing (with copies to the Navy, DTSC and RWQCB) with a Notice of Intent to Find Default and of the proposed basis for issuing a Finding of Default. Respondents may dispute the Notice of Intent to Find Default, in accordance with the process provided in Section XXIII (Dispute Resolution), and the Navy may participate in any such dispute resolution as provided in Section ____ of the Amended FFA. In the event of an EPA determination that a Default has occurred, either without Respondents having invoked the Dispute Resolution process in Section XXIII, or following the conclusion of such Dispute Resolution process, EPA will send Respondents a written Finding of Default, with copies to the Navy, DTSC, and RWQCB. The Finding of Default will provide the basis for EPA’s determination and will specify whether Respondents may continue to perform the Work while the Navy prepares to resume response action activities under the Amended FFA.

105. Within thirty (30) days of Respondents’ receipt of the Finding of Default, or such other time period specified by EPA, Respondents shall cease performance of the Work.

106. In the event that the Navy resumes performance of response action activities under the Amended FFA, Respondents shall fully cooperate in the orderly transfer of responsibilities for performance of the Work to the Navy

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

XXXIII. ACCESS TO INFORMATION

107. Respondents shall provide to EPA, DTSC, ~~and RWQCB, and the Navy,~~ upon request, copies of all documents and information within Respondents' possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, DTSC, ~~and RWQCB, and the Navy~~ for purposes of investigation, information gathering, or testimony, Respondents' employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

a. Business Confidential and Privileged Documents. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA, DTSC and RWQCB under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, DTSC, ~~and RWQCB, and the Navy~~ or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

b. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents asserts such a privilege in lieu of providing documents, Respondents shall provide EPA, DTSC, ~~and RWQCB, and the Navy~~ with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

XXXIV. RETENTION OF RECORDS

108. Until 10 years after the Respondents' receipt of EPA's notification pursuant to Paragraph 55.c. of Section XVII (Certification of Completion of the Work), Respondents, or their successors, shall preserve and retain all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondents (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary

109. At the conclusion of this document retention period, Respondents, or its successor, shall notify EPA, DTSC, ~~and~~ RWQCB, and the Navy at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, ~~or~~ DTSC, or the Navy, Respondents shall deliver any such records or documents to EPA, DTSC and RWQCB. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, Respondents shall provide EPA, DTSC, ~~and~~ RWQCB, and the Navy with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

XXXV. NOTICES AND SUBMISSIONS

110. Whenever under the terms of this Order, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Order with respect to EPA, DTSC, RWQCB and the Respondents, respectively.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

As to the EPA:

Director, Superfund Division
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

and

EPA Project Coordinator, SFD-8-1
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the Regional Financial Management Officer:

Chief, Cost Accounting
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the California Department of Toxic Substances Control:

Anthony J. Landis, P.E.

Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substance Control
8800 Cal Center Drive
Sacramento, CA 95826

and

Project Manager
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

and

As to the Navy:

Navy BRAC Environmental Coordinator for Hunter's Point Shipyard
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

and

As to the San Francisco Bay Regional Water Quality Control Board:

Executive Officer

CA Regional Water Quality Control Board, San Francisco Bay

1515 Clay Street, Suite 1400

Oakland, CA 94612

Tel (510) 622-2300 Fax (510) 622-2460

-

Project Manager - Hunters Point Shipyard

CA Regional Water Quality Control Board, San Francisco Bay

1515 Clay Street, Suite 1400

Oakland, CA 94612

Tel (510) 622-2300 Fax (510) 622-2460

-

As to the Respondents:

XXXVI. APPENDICES

111. The following appendices are attached to and incorporated into this Order:

- A. Legal description of the Site
- B. Map of the Site
- C. Statement of Work
- D. ROD Implementation Areas**
- E. Land and Water Use Restrictions (NOTE: What is intended by the
– the LUCs? The RMPs?)

XXXVII. COMMUNITY RELATIONS

112. Respondents shall prepare and submit for review and approval by EPA, in consultation with DTSC and RWQCB, a Community Relations Plan, as defined in the SOW. EPA, after consultation with DTSC and RWQCB, will determine the appropriate role for the Respondents under the Plan. Respondents shall also cooperate with EPA, DTSC, and RWQCB in providing information regarding the Work under this Order to the public. As requested by EPA, Respondents shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site or the Work being conducted under this Order.

XXXVIII. MODIFICATIONS

113. EPA, after consultation with DTSC and RWQCB, may determine that in addition to tasks defined in the SOW, or initial approved work plans, other additional work may be necessary to accomplish the Remedial Action Objectives. To the extent that such additional work is within the scope of the RODs and does not otherwise constitute an amendment, modification or supplement to the RODs, EPA, after consultation with DTSC and RWQCB, may request in writing that Respondents perform these response actions and Respondents shall confirm its willingness to perform the additional work, in writing, to EPA, DTSC, RWQCB, and the Navy within 14 days of receipt of EPA's request, or Respondents may invoke dispute resolution in accordance with Section XXIII. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA, after consultation with DTSC, RWQCB, and the Navy determines are necessary. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

114. If Respondents seeks permission to deviate from any approved work plan or schedule or the SOW, except as otherwise provided for by field modifications to Remedial Action Work Plan. Respondents' Project Coordinator shall submit a written request to EPA, DTSC, RWQCB, and the Navy ~~for approval~~ outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving written approval from the EPA Project Coordinator, after consultation with the DTSC, RWQCB, and Navy Project Coordinator.

115. No informal advice, guidance, suggestion, or comment by the EPA, DTSC, Navy, or RWQCB Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified in accordance with this Section.

116. This Order shall be made available for a period of not less than thirty (30) days for public notice and comment. The United States, DTSC and RWQCB reserve the right to withdraw or withhold their consent if the comments regarding the Order disclose

Confidential

facts or considerations which indicate that the Order is inappropriate, improper, or inadequate.

XXXIX. TERMINATION

117. This Order shall terminate under one or more of the following circumstances:

a. Upon a Finding of Default by EPA, in consultation with DTSC and RWQCB, under Paragraph 114; or

b. Upon the second anniversary of EPA's Certification of Completion of the Remedial Action for the final ROD Implementation Area, pursuant to Paragraph 53 provided that the Respondents shall have completed the initial development cover for all ROD Implementation Areas and have entered into an O & M Agreement with DTSC; or
Upon termination of the ETCA, this Order shall terminate with respect to any ROD Implementation Area for which EPA has not yet issued a Certification of Completion of Remedial Action. Upon termination of the ETCA, this Order shall remain effective with respect to any ROD Implementation Area and Work for which EPA has already issued the Certification of Completion of Remedial Action. NOTE: We don't remember who added this, or why it was added. We need to discuss.

XXXX. EFFECTIVE DATE

118. This Order shall be effective when EPA issues written notice to Respondents that each of the following conditions have been met: a.) the expiration of the public notice and comment period for this Order and EPA's determination that comments received, if any, do not require EPA to modify or withdraw from this Order; b.) the completion of the public comment process on the FOSET; c.) the execution of the ETCA and the Amended FFA; and d.) EPA's approval of and the Governor of the State of California's concurrence with the Covenant Deferral Request.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR ~~RI/FS AND~~ RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For Respondents:

Agreed this ____ day of _____, 2____.

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR ~~RI/FS AND~~ RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For EPA:

Agreed this ____ day of _____, 2____.

Michael Montgomery
Assistant Director of Federal Facilities and Site
Cleanup Branch
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

Date

Robert G Carr
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR ~~RI/FS AND~~ RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For the United States:

Agreed this ____ day of _____, 2____.

Assistant Attorney General
Environment and Natural Resources Section
U.S. Department of Justice

Washington, D.C. 20530

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR ~~RI/FS AND~~ RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For DTSC:

Agreed this ____ day of _____, 2____.

Confidential

ADMINISTRATIVE ORDER ON CONSENT
FOR ~~RIFS AND~~ RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

Bruce H. Wolfe
Executive Officer
CA Regional Water Quality Control Board, San Francisco Bay
1515 Clay Street, Suite 1400
Oakland, CA 94612

-

For RWQCB:

Agreed this ____ day of _____, 2____.

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

4821-0101-5557.5
LEGAL US W # 67748758.2

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

City/Lennar Redline 4-22-11~~Navy Redline 1-10-11~~

EARLY TRANSFER COOPERATIVE AGREEMENT

**COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY**

AND

**THE SAN FRANCISCO REDEVELOPMENT AGENCY
SAN FRANCISCO, CALIFORNIA**

4841-3089-6136-1
LEGAL_US_W # 66961412.5
LEGAL_US_W # 66961412.6
LEGAL_US_W # 66961412.7

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
AND
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA
TABLE OF CONTENTS**

CLAUSE NUMBER	CLAUSE NAME	PAGE NUMBER
None	GENERAL PROVISIONS	5
<u>ARTICLE I</u>	<u>SCOPE AND PURPOSE</u>	7
Section 101	Performance of Environmental Services	7
<u>ARTICLE II</u>	<u>DEFINITIONS</u>	7
Section 201.	Administrative Order on Consent	
Section 202.	Agreement	
Section 203.	Amended Federal Facilities Agreement	
Section 204.	Area Covered by Environmental Services	
Section 205.	CERCLA Records of Decision	
Section 206.	Certification of Completion	
Section 207.	Covenant to Restrict the Use of Property	
Section 208.	Environmental Conditions	
Section 209.	Environmental Insurance Policies	
Section 210.	Environmental Regulatory Agency or Agencies	
Section 211.	Environmental Services	
Section 212.	Hunters Point Naval Shipyard	
Section 213.	Ineligible Work	
Section 214.	Known Condition(s)	
Section 215.	Long-Term Obligations	
Section 216.	Military Munitions	
Section 217.	Navy and Government	
Section 218.	Navy Grants Officer	

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 219.	Navy Remedy Failure	
Section 220.	Navy-Retained Conditions	
Section 221.	Operation and Maintenance Agreement	
Section 222.	Petroleum Corrective Action Plan	
Section 223.	Radiological Materials	
Section 224.	Regulatory Closure	
Section 225.	Regulatory Enforcement Activities	
Section 226.	Regulatory Oversight	
Section 227.	Remedial Action Closeout Report	
Section 228.	Remedial Design Package Report(s)	
Section 229.	Reuse Plan	
Section 230.	Risk Management Plan ("RMP")	
Section 231.	San Francisco Redevelopment Agency	
Section 232.	Special Exclusions	
Section 233.	Technical Specifications and Requirement Statement	
Section 234.	Unexploded Ordnance/Munitions or Explosives of Concern	
Section 235.	Unknown Conditions Discovered During the Course of Remediation	
Section 236.	Unknown Conditions Discovered Outside the Course of Remediation	

<u>ARTICLE III</u>	<u>OBLIGATIONS OF THE PARTIES</u>	15
Section 301	Obligations of the SFRA	15
Section 302	Obligations of the Navy	17
<u>ARTICLE IV</u>	<u>FUNDING LIMITATION AND BUDGETING</u>	19
Section 401	Navy's Funding Limitation	19
<u>ARTICLE V</u>	<u>PAYMENT SCHEDULE</u>	19
Section 501	General	19
Section 502	Payments	19
<u>ARTICLE VI</u>	<u>PAYMENT</u>	20
Section 601	General	20
Section 602	Relation to Prompt Payment Act	20
Section 603	Direct Navy Payment of SFRA's Obligations	21
<u>ARTICLE VII</u>	<u>GENERAL PROVISIONS</u>	21
Section 701	Term of Agreement	21
Section 702	Amendment of Agreement	21
Section 703	Successors and Assigns	21

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 704	Entire Agreement	21
Section 705	Severability	22
Section 706	Waiver of Breach	22
Section 707	Notices	22
Section 708	Conflict of Interest	23
Section 709	Access to and Retention of Records	23
Section 710	Change of Circumstances	22
Section 711	Liability and Indemnity	23
Section 712	Liability and Insurance	25
Section 713	Reports	26
Section 714	Officials Not to Benefit	27
Section 715	Representations	27
Section 716	Excess Funds	27
<u>ARTICLE VIII</u>	<u>APPLICABLE LAWS AND REGULATIONS</u>	28
Section 801	Applicable Law	28
Section 802	Governing Regulations	28
Section 803	Environmental Protection	28
<u>ARTICLE IX</u>	<u>PROCUREMENT</u>	29
Section 901	SFRA Contracts	29
Section 902	Preference for Local Residents	29
<u>ARTICLE X</u>	<u>TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION</u>	30
Section 1001	Dispute Resolution	30
Section 1002	Enforcement	31
Section 1003	Termination	31
Section 1004	Effects of Suspension and Termination	32
<u>ARTICLE XI</u>	<u>LEGAL AUTHORITY</u>	33
Section 1101	Legal Authority	33
None	<u>SIGNATURE AND WITNESS</u>	33

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

APPENDICES

Appendix 1	Map of the Hunters Point Naval Shipyard
Appendix 2	Map of the ACES
Appendix 3	Known Conditions
Appendix 4	Environmental Insurance Policies
Appendix 5	RESERVED
Appendix 6	RESERVED
Appendix 7	RESERVED
Appendix 8	RESERVED
Appendix 9	Technical Specifications and Requirement Statement ("TSRS")
Appendix 10	Administrative Order on Consent ("AOC")
Appendix 11	Federal Facilities Agreement, as amended
Appendix 12	Escrow Agreement
Appendix 13	<i>Agreement to Implement the March 31, 2004 Conveyance Agreement between the United States of America and the San Francisco Redevelopment Agency for the conveyance of Hunters Point Naval Shipyard with Regard to IR Sites 7/18 and the Radiologically-impacted Area around Building 140 dated _____.</i>

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
AND
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

THIS EARLY TRANSFER COOPERATIVE AGREEMENT ("Agreement") is made by and between the **UNITED STATES OF AMERICA**, acting by and through Naval Facilities Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment authority by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of Defense and also a local public authority legally empowered to enter into this Agreement. Hereinafter, the Navy and the SFRA are each sometimes referred to individually as a "Party" and collectively as the "Parties."

GENERAL PROVISIONS

The Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with various base closure statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real and personal property at those facilities. The Navy is authorized to dispose of real and personal property on Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local reuse organization approved by the City, in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-160). The SFRA is a local reuse organization approved by the City of San Francisco to accept conveyance of HPNS property in accordance with the authorities set out above, and it is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

The Parties did execute and enter into that certain *Conveyance Agreement Between the*

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

United States of America, Acting by and through the Secretary of the Navy, and the San Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard, dated March 31, 2004 ("Conveyance Agreement").

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the completion of all remedial action necessary to protect human health and the environment provided that the property is suitable for transfer for the intended uses and the intended use is consistent with the protection of human health and the environment. Under this early transfer authority, the Navy intends to convey title to the portion of HPNS property known as the Area Covered by Environmental Services (hereinafter "ACES"), to the SFRA. The ACES is defined in Article II below and shown in Appendix 2. The SFRA assumes responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section 211 below) for the consideration set forth in this Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), after all response action necessary to protect human health and the environment with respect to any hazardous substances remaining on the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an appropriate document containing the CERCLA warranty that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken.

Article I SCOPE AND PURPOSE

Section 101. Scope and Purpose of Agreement

The principal purpose of this Agreement is to facilitate early transfer and redevelopment by providing the vehicle under which the SFRA will perform the Environmental Services in the ACES in order to satisfy the covenant requirements of the "early transfer" provisions of Section 120(h)(3)(C)(iii) of CERCLA for the consideration specified herein. This Agreement is considered a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section 2701(d)(1) and benefits both the Navy and the SFRA because it facilitates SFRA access to and control of the ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Article II below) and immediate reuse by allowing the SFRA to cause to be performed certain environmental remediation activities while simultaneously facilitating redevelopment as defined herein. ~~In addition, early transfer will allow the Navy to convey title in compliance with CERCLA requirements at an earlier date than could otherwise be achieved.~~

The revitalization of the Hunters Point Naval Shipyard and the adjacent Bayview

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Hunters Point neighborhood has been a top priority for SFRA, the City of San Francisco and the community for over thirty years. This is because the Bayview Hunters Point community has one of the highest unemployment rates in the City, the highest concentration of public housing sites and low-income residents, is currently underserved by transit and lacks extensive quality access to open space and neighborhood-serving retail amenities. The SFRA, City and the community have been planning for the redevelopment of HPNS since its closure in 1974. While active, HPNS was the economic engine for the Bayview Hunters Point community. At its peak, HPNS employed more than 17,000 civilian and military personnel, many of whom lived in Bayview Hunters Point. As a result, the closure of HPNS significantly impacted the economic vitality of the surrounding Bayview Hunters Point community. After years of work by the HPNS Citizens Advisory Committee ("CAC"), the SFRA and the City's Board of Supervisors adopted a redevelopment plan for HPNS, which contemplated development of a mix of uses including residential, commercial, research and development, cultural and open space uses. In 2004, the SFRA and the Navy negotiated the terms of a comprehensive Conveyance Agreement, which provided for the phased conveyance of parcels on HPNS to SFRA upon completion of remediation activities by the Navy. Consistent with the terms of the Conveyance Agreement, in 2004 the Navy conveyed Parcel A on HPNS to the SFRA, who subsequently conveyed the land for development consistent with the terms of the Phase 1 Disposition and Development Agreement and the HPNS redevelopment plan. The development plans for Parcel A include the construction of up to 1,600 homes, of which between 27-40% will be affordable, 26 acres of public parks and open space and new public infrastructure and utilities. Infrastructure construction on Parcel A is nearly complete and the vertical construction of the first blocks of homes is expected to commence in 2011.

In recognizing that the HPNS redevelopment plan and the redevelopment plan for the adjacent Bayview Hunters Point Redevelopment Project Area, which includes Candlestick Point, shared similar objectives of creating economic development, affordable housing, parks and open space and integrated transportation improvements, the SFRA and the community began planning for the development of HPNS and Candlestick Point as one integrated project. In 2007, the SFRA, CAC, Mayor and Board of Supervisors endorsed a Conceptual Framework for the integrated development of the sites, which built on the principals of the redevelopment plans and envisioned a mixed-use development including hundreds of acres of public parks and open space, thousands of units of affordable housing, extensive job-generating retail uses, new and renovated replacement studio space for the existing HPNS artist community, and the complete rebuild of the Alice Griffith Public Housing Development on Candlestick Point, which is in severe disrepair. In furtherance of the Conceptual Framework, the City's voters in June of 2008 overwhelmingly passed Proposition G, the Bayview Jobs, Parks and Housing Initiative, which among other things, set forth the overarching policies for the revitalization of the HPNS and Candlestick Point and urged the SFRA and all agencies with jurisdiction over the area to proceed expeditiously with redevelopment.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

After years of community-based planning, hundreds of community and government agency meetings, in the summer of 2010 the SFRA, other applicable City boards and commissions and the City's Board of Supervisors approved all land use entitlements as well as financing and transactional documents for the development of Phase 2 of the HPNS and Candlestick Point. The approved redevelopment project includes 10,500 housing units spread across HPNS and Candlestick Point, of which 32% will be offered at below market rates at a range of income levels serving those with very low incomes as well as working families; the complete rebuild of the Alice Griffith Public Housing Development at Candlestick Point - one of San Francisco's most dilapidated public housing sites; more than 300 acres of new and restored public parks and open space; 2,500,000 to 5,000,000 square feet of job-generating research and development space on HPNS focused on the development of clean and green technologies; more than \$1 billion of investment in new public infrastructure and transportation; 125,000 square feet of neighborhood-serving retail space at HPNS and 760,000 square feet of both neighborhood - serving and regional retail space on Candlestick Point; permanent new and renovated studio space for the existing artists at HPNS; and an additional \$83 million community benefits package which provides funding for homeownership and other housing assistance, workforce and job training development, education, and community health and wellness programs and facility upgrades that will provide tangible benefits to the adjacent Bayview Hunters Point community. At full build-out, the development of the remaining parcels of HPNS and Candlestick Point is expected to generate approximately 10,000 permanent jobs and thousands of ongoing construction job opportunities throughout the 20-30 year phased build-out of the site. The development of HPNS and Candlestick Point is a unique and important project to the SFRA, City and the community because of the scope and scale of public benefits that it will deliver to the southeast sector of the City, the region, and the State.

Early transfer will not only allow the Navy to convey title in compliance with CERCLA requirements at an earlier date than could otherwise be achieved, but it will also expedite the delivery of these desperately needed public benefits to the historically underserved Bayview Hunters Point community. Early transfer will facilitate development at HPNS, which will serve as an economic catalyst, leveraging private investment and generating tax increment revenue needed to rebuild the Alice Griffith Public Housing Development at Candlestick Point. Mixed-income housing, a permanent home for the existing HPNS artists and much needed job-generating uses will also be created at HPNS. Due to the integrated nature of the development plans, the early development of HPNS will also cause millions of dollars of investment in the Candlestick Point State Recreation Area as well as create new waterfront public access and parks and open space areas on the Shipyard.

The Navy is conveying HPNS Parcel B (with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140), and HPNS Parcel G as shown in Appendix

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 __, to the SFRA pursuant to the Navy's early transfer authority. The Navy and the United States
2 Environmental Protection Agency ("EPA") have issued Records of Decision ("RODs") for
3 HPNS Parcels B and G selecting remedial actions for responding to releases of CERCLA
4 hazardous substances as provided by the Federal Facility Agreement ("FFA") entered into by the
5 Navy and the Environmental Regulatory Agencies (as defined in Article II below) in 1991. The
6 Navy is legally responsible for executing the remedial actions selected in those RODs as required
7 by CERCLA, the National Oil and Hazardous Substances Contingency Plan ("NCP"), and the
8 FFA. It is anticipated that the completion of remedial action required by the RODs will satisfy
9 the covenant requirements of Section 120(h)(3)(C)(iii) of CERCLA.

10
11 Subject to the provisions of this Agreement, the Navy and SFRA hereby agree that SFRA
12 shall assume the Navy's responsibility for and shall cause to be performed the Environmental
13 Services (as defined in Article II below) subject to the receipt of funding from the Navy in an
14 amount not to exceed the maximum funding obligation of _____ .

15
16 The Navy and the Environmental Regulatory Agencies have entered into an FFA
17 Amendment suspending the Navy's FFA obligations to implement remedial actions required by
18 the RODs and applicable Remedial Design ~~reports~~Package Reports. The SFRA has agreed with
19 the Environmental Regulatory Agencies to conduct these remedial actions pursuant to an
20 Administrative Order on Consent ("AOC") entered into with the Environmental Regulatory
21 Agencies. The provisions of the AOC related to Long-Term Obligations (as defined in Article II
22 below) may be superseded by an Operation and Maintenance Agreement (as defined in Article II
23 below). The FFA Amendment provides that the Navy will resume CERCLA responsibility for
24 compliance with the FFA in the event of a Finding of Default as provided in the AOC or upon a
25 termination of this Agreement pursuant to Sections 701 and 1003 below.

26
27 Nothing in this Agreement shall be construed as creating a legal obligation (contractual
28 or otherwise) for either the Navy or SFRA to fund or perform remediation addressing either
29 Navy Retained Conditions or ("NRCs, see Section 206), Special Exclusions (Section 239), or
30 Ineligible Work (Section 218), nor shall this Agreement be construed to limit or otherwise effect
31 any legal obligations of either the Navy or SFRA apart from this Agreement, except as
32 specifically provided herein. No funds provided under Section 302(a) may be used by the SFRA
33 to fund or perform either NRCs, Special Exclusions or Ineligible Work. If the SFRA remediates
34 an NRC or Special Exclusion or performs Ineligible Work either voluntarily or pursuant to the
35 AOC or other enforcement order, the SFRA agrees that it will do so at its own cost and expense,
36 subject to the provisions of Article III and Section 711.

37
38 Notwithstanding any other provisions of this Agreement, the Navy is not a party to,
39 bound by, or responsible for compliance with any of the provisions of the AOC including
40 AOC provisions concerning NRCs or Special Exclusions.— Nothing in this Agreement shall

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

be construed as creating a Navy legal obligation to SFRA under this Agreement (contractual or otherwise) for the Navy to comply with either AOC or Amended FFA provisions regarding NRCs or Special Exclusions.

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**A r t i c l e I I
DEFINITIONS**

Section 201. Administrative Order on Consent

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, CP Development Co., LP, and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 202. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 203. Amended Federal Facilities Agreement

The term "Amended Federal Facilities Agreement" or "Amended FFA" means that certain document executed by the Navy, USEPA, DTSC, and RWQCB dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS dated January 22, 1992 ("FFA"), amended such FFA.

Section 204. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2, and specifically excludes IR Sites 7/18 and the radiologically-impacted area around Building 140.

Section 205. CERCLA Records of Decision

The term "CERCLA Records of Decision" or "CERCLA RODs" means the CERCLA Record of Decision for Parcel B dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18, 2009.

Section 206. Certification of Completion

The term "Certification of Completion" means a certification issued after approval of a RACR pursuant to Paragraph 53.c of the AOC or a certification for the entire Site issued pursuant to Paragraph 53.d of the AOC.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 207. Covenant to Restrict the Use of Property

The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain document or documents required by the CERCLA RODs that identifies the environmental covenants and restrictions that shall apply to a portion of, or all of, the ACES.

Section 208. Environmental Conditions

The term "Environmental Condition(s)" means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:

- a. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 et seq.;
- b. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.;
- c. California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 et seq.);
- d. California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 et seq.);
- e. Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.);
- f. Or similar federal or state environmental law.

Section 209. Environmental Insurance Policies

The term "Environmental Insurance Policies" means the bindable environmental insurance policies substantially in the form shown in Appendix 4, which the SFRA will procure in accordance with the requirements as set forth below in Section 712.e.

Section 210. Environmental Regulatory Agency or Agencies

The term "Environmental Regulatory Agency or Agencies" means the United States Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Water Quality Control Board ("RWQCB").

Section 211. Environmental Services

The term "Environmental Services" means performance of the activities necessary to achieve Regulatory Closure and comply with Long-Term Obligations as provided in the TSRS,

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

including but not limited to those required to comply with the RODs and associated Remedial Design ~~Package reports~~ Reports and CERCLA, consistent with the NCP, with respect to (i) Known Conditions and Unknown Conditions Discovered During the Course of Remediation even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation, but only to the extent such activities are ~~covered-funded~~ by the Environmental Insurance Policies or to the extent such funding is unavailable as a result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

The term "Environmental Services" does not include, except as specifically provided herein, the performance of any activities related to the following: Navy Retained Conditions; Ineligible Work; or Special Exclusions.

Section 212. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 213. Ineligible Work

The term "Ineligible Work" means the performance of any or more of the following work:

a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering of LBP from buildings and structures.

b. Cleanup of pesticides and herbicides applied in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane properly applied as a termiticide to presently existing wooden structures, their foundations, and underlying soils.

c. Additional remediation necessary to implement a change in land use from the land uses set forth in the 1997 Reuse Plan.

d. Management and disposal of construction and demolition debris except to the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 extent such debris is generated in the course of conducting the Environmental Services, such as
2 the demolition of hardscape necessary to install a monitoring well.

3
4 e. Clean up of contaminants within existing buildings and structures, that have not
5 been released into the environment; except for removal of liquids, solids, gases, sediments,
6 and/or sludges from and including oil/water separators and other equipment and containment
7 vessels within or beneath structures to the extent the equipment and vessels could not
8 have been reasonably discovered by visual inspection during a pre-conveyance walk-
9 through in which both parties participated.

10
11 f. Any activity, including management and offsite disposal of excavated
12 contaminated soil or solid waste, associated with disturbing or altering a cover, cap or
13 other component of an environmental remedy installed pursuant to the AOC, except
14 to the extent such disturbance or alteration is necessary to comply with the AOC to
15 address an environmental condition other than a condition that the disturbed or altered remedy
16 component was designed to address.

17
18 g. Non-cleanup environmental compliance activities relating to
19 redevelopment/construction following conveyance (e.g., compliance with air quality permit
20 requirements for control of fugitive dust emissions that are not contaminated with hazardous
21 substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES")
22 stormwater discharge permit requirements regulating excavation/disturbance of soil that is not
23 contaminated with hazardous substances or petroleum).

24
25 h. Any other work or activity that is not related to the performance of the
26 Environmental Services.

27
28 i. All Regulatory Enforcement Activities.

29
30 j. Cleanup that is required as a result of a violation of: (i) use restrictions by the
31 SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed
32 covenant or ~~IC~~ Institutional Control applicable to the ACES.

33
34 k. Cleanup arising from the failure of the SFRA, its successors and assigns,
35 to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA
36 RODs, AOC, applicable Remedial Design Package Report(s), and/or Risk Management Plan
37 ("RMP").
38

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 214. Institutional Control(s)

The term "Institutional Controls" means non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, deed restrictions, zoning restrictions, special building permit requirements, and well drilling prohibitions

Section 215. Known Condition(s)

The term "Known Condition" means one or more specified chemicals of concern in a specified medium (e.g., soil or groundwater) at a location identified in the CERCLA RODs as requiring remedial action.

Section 216. Land Use Control(s)

The term "Land Use Controls" or "LUCs" means activity and use restrictions specified in CERCLA Record of Decisions and LUC RODs as further modified in the RMPs.

Section 217. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting, inspection, public involvement and Operation and Maintenance within the scope of Environmental Services that (1) and institutional control ("IC") and operation and maintenance requirements that are required to be performed after a Certificate of Completion has been issued pursuant to the AOC, (2) ~~pertain to including but not limited to requirements to maintain Regulatory Closure and requirements associated with or in furtherance of the CERCLA RODs, and applicable Remedial Design Package Report reviewed and approved pursuant to the FFA, and including~~ providing existing records and reports to the Navy for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA's preparation of the CERCLA five-year reviews thereafter, or (3) pertain to maintenance of Institutional Controls and Land Use Controls, including monitoring implementation of corrective actions for violations of the Institutional Controls and Land Use Controls in accordance with the requirements of the CRUP(s) and Deed(s) that are signed and recorded at the time of transfer of title. Long Term Obligations do not include obligations attributable to Ineligible Work, NRCs or Special Exclusions.

Section 218. Military Munitions

The term "Military Munitions" means all ammunition products and components

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

Section 217219. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 218220. Navy Grants Officer

The term "Navy Grants Officer" means the Director of Acquisition, NAVFACENGCOM.

Section 220221. Navy-Retained Conditions

The term "Navy Retained Conditions" means Unexploded Ordnance (as defined in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 215). The term "Navy Retained Conditions" does not include Ineligible Work as defined in Section 218 of the ETCA.

Section 222. Operation and Maintenance

The term "Operation and Maintenance" or "O & M" shall mean all activities within the scope of Environmental Services required to maintain, after the issuance of a Certificate of Completion, the effectiveness of the remedial action(s) selected in each of the RODs as required by EPA, in consultation with DTSC and RWQCB, pursuant to the AOC, or any O&M Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section ~~221~~223. Operation and Maintenance Agreement

The term "Operation and Maintenance Agreement" or "O&M Agreement" means any Operations and Maintenance Agreement entered into by DTSC and SFRA that supersedes the provisions of the AOC related to Long-Term Obligations ~~and is agreed to by EPA, the Navy and RWQCB, and obligates SFRA to perform all Long-Term Obligations that were required in the AOC and is issued subsequent to the issuance of a Certification of Completion of Remedial Action.~~

Section 224. Operation and Maintenance Plan

~~The term "Operation and Maintenance Plan" or "O&M Plan" means the specific Operation and Maintenance Plan that is one element of the Remedial Design Package Report(s) or any subsequent revisions thereto. The current approved versions of these O&M Plans are the Final Preconstruction Operation and Maintenance Plan, Parcel G and Parcel B (excluding Installation Restoration Sites 7 and 18), dated October 4 and December 10, 2010, respectively.~~

Section ~~222~~225. Petroleum Corrective Action Plan

[Reserved - definition, and references in operative language to be reinserted if PCAP work is not completed by Navy before execution.]

Section ~~223~~226. Radiological Materials

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides other than being handled as household hazardous waste.-

Section ~~224~~227. Regulatory Closure

The term "Regulatory Closure" means Environmental Regulatory Agency approval, by issuance of one or more Certifications of Completion for CERCLA response actions that collectively address the entire ACES (or encompassing the portion of the ACES or particular

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

condition with respect to which the term is used) pursuant to the procedures set forth in the AOC and, to the extent the Environmental Services includes activities not covered by the AOC, such as certain petroleum releases, written Environmental Regulatory Agency approval that no further action is required for that condition.

Section ~~225~~228. Regulatory Enforcement Activities

The term "Regulatory Enforcement Activities" means any regulatory enforcement costs that are not allowable costs under 10 U.S.C. 2701(d)(3), including activities associated with EPA, DTSC, RWQCB, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

Section ~~226~~229. Regulatory Oversight

The term "Regulatory Oversight" includes all activities performed by EPA, DTSC, and RWQCB necessary to oversee the implementation of the AOC and any O&M Agreement that supersedes the AOC other than Regulatory Enforcement Activities and oversight of Ineligible Work.

Section ~~227~~230. Remedial Action Completion Report

The term "Remedial Action Completion Report" or "RACR" means a report prepared pursuant to the *DoD/EPA Joint Guidance, Remedial Streamlined Site Closeout and NPL Deletion Process for DoD Facilities* [Jan 19, 2006] demonstrating that (1) the remedy at a ROD Implementation Area has been fully performed, including recordation of a modification to any LUC(s) in place at the time of transfer, if required by EPA; and (2) the Remedial Action Objectives have been attained or in the case of long-term operation of a groundwater or soil vapor intrusion mitigation system, the system is constructed, in place and is operating properly and successfully, the LUC(s), if required by EPA; (2) initial implementation of any other institutional controls called for in the ROD, and (3) the Remedial Action Objectives have been attained

Section ~~228~~231. Remedial Design Package Report(s)

The term "Remedial Design Package Report(s)" includes those certain Design Basis Reports, Remedial Action Monitoring Plans [RAMP], Land Use Control Remedial Design [LUC RD] Reports, and Operation and Maintenance [O&M] Plans-. The Final Remedial Design Package Report for Parcel G is dated October 4, 2010 and the Final Remedial Design Package

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Report for Parcel B excluding IR Sites 7 and 18 is dated December 10, 2010.

Section ~~219~~232. Remedy Failure~~[moved to correctly alphabetize]~~

The term "Remedy Failure" means any circumstance, not due to negligence by SFRA where a remedy selected in the CERCLA RODs or subsequent CERCLA decision document issued by the Navy has been implemented by SFRA in accordance with the RODs and approved remedial design documents but is determined by EPA not to have achieved the ROD's remedial action objectives. ~~Remedy Failure does not include volatile organic compound (VOC) vapor migration and/or accumulation caused by redevelopment.~~

Section ~~229~~233. Reuse Plan

The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997.

Section ~~230~~234. Risk Management Plan ("RMP")

The term "Risk Management Plan ("RMP")" means specifically the pre-RACR and post-RACR Risk Management Plans dated _____.

Section ~~231~~235. San Francisco Redevelopment Agency

The term San Francisco Redevelopment Agency or "SFRA" is the Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense.

Section ~~232~~236. Special Exclusions

The term "Special Exclusions" means any of the following:

a. Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

1. The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

2. Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in subparagraphs b through f of this Section;

b. Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.

c. Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

d. The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.

e. Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

Section ~~233~~237. Technical Specifications and Requirement Statement

The term "Technical Specifications and Requirement Statement" or "TSRS" means the statement of work included in Appendix 9.

Section ~~234~~238. Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section ~~235~~239. Unknown Conditions Discovered During the Course of Remediation

The term "Unknown Conditions Discovered During the Course of Remediation" means Environmental Conditions that are discovered in a portion of the ACES prior to approval of a RACR for that portion and that are not Special Exclusions, or Navy Retained Conditions. [NOTE: AON informs us that it is likely the insurer's concept of "during the course of remediation" will be consistent with this broader and brighter line definition, which should benefit all of us.]

Section ~~236~~240. Unknown Conditions Discovered Outside the Course of Remediation

The term "Unknown Conditions Discovered Outside the Course of Remediation" means Environmental Conditions that are discovered in a portion of the ACES after approval of a RACR for that portion, and that are not Special Exclusions, or Navy Retained Conditions.

Article III OBLIGATIONS OF THE PARTIES

Section 301. Obligations of the SFRA

In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the SFRA agrees that it shall perform or cause to be performed the Environmental Services.

a. The SFRA shall complete the Environmental Services consistent with the TSRS and NCP and in compliance with the RODs, ~~RD-Remedial Design Package~~ Reports, CERCLA. If the SFRA transfers a portion of the ACES to another party, SFRA shall remain responsible for performing the Environmental Services on that portion. The SFRA shall ensure that the initial cap/covers required by the CERCLA RODs shall be installed throughout the ACES no later than seven (7) years after the date of execution of this Agreement by both parties, or such later date as the Navy and Environmental Regulatory Agencies approve. If the EPA's lead Remedial Project Manager approves a later date and the Navy disapproves that later date, the EPA Region IX Director of Federal Facilities shall make the final determination regarding whether to approve or disapprove the later date. The SFRA shall not propose revisions to the remedies selected in the CERCLA RODs that would require an Amendment to, or Explanation of Significance Difference (ESD) from, the CERCLA RODs, without the consent of the Navy, which consent shall not be unreasonably withheld.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

b. The SFRA's obligation to perform Environmental Services is expressly conditioned upon the Navy providing funding for performing the Environmental Services in accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the SFRA's obligations shall be limited to only that portion of Environmental Services which have been performed by use of the funds actually provided by the Navy or the insurer as set forth in Section 712.b hereof. Any dispute with respect to delineating the portion of the Environmental Services performed with the use of such partial funding shall be subject to dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable progress toward performing Environmental Services.

c. In the event this Agreement terminates pursuant to Section 1003 below, the SFRA shall return or cause to be returned to the Navy any funds held by the SFRA or independent third party payee not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.

d. The SFRA shall indemnify the Navy pursuant to the terms of Section 711. hereof.

e. The SFRA shall conduct audits and shall provide performance and financial reports to the Navy as follows:

(1) In accordance with the provisions contained in 32 CFR 33.26, the SFRA is responsible for obtaining annual audits in accordance with the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. The costs of audits made in accordance with this section are allowable costs under this Agreement.

(2) The SFRA is responsible for assuring compliance with applicable Federal requirements **[NOTE: There have not been any "performance goals" specified]**. In accordance with 32 CFR 33.40, the SFRA shall submit timely performance reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance provider.

(3) In accordance with 32 CFR 33.41, the SFRA shall submit timely financial status reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

provider.

g. In the event that the SFRA is served with a complaint or written notice by an Environmental Regulatory Agency, or other third parties, that suggests that an action is necessary related to an Environmental Condition at or affecting the ACES for which the SFRA asserts that it is not responsible, the SFRA shall provide the Navy Notice and a copy of all applicable documents as soon as possible but no later than seven (7) calendar days following such receipt.

h. The SFRA shall notify the Navy within thirty (30) calendar days of SFRA discovering, or receiving actual notice of, any Environmental Condition at or affecting the ACES which SFRA believes is outside the scope of the Environmental Services and for which SFRA believes the Navy is responsible under the Amended FFA, ~~except~~ The exception to this duty is that the SFRA shall notify provide such notice to the Navy within twenty-four (24) hours of the discovery of any Navy Retained Condition within twenty-four (24) hours of any such discovery. The notice should include a brief description and electronic images of the condition and an explanation /basis for SFRA's determination that the Environmental Condition is not within the definition of Environmental Services. If the Navy ~~responds to this notice by asserting that the Environmental Condition that is the subject of the~~ does not agree with SFRA's assertion in the notice provided under this paragraph 301(h) or paragraph 301(g) above ~~is within that the condition is outside~~ the Scope of the Environmental Services, the Parties shall, within a reasonable time ~~after such response~~, meet and confer with EPA, DTSC, and RWQCB to attempt to reach a mutually agreeable solution to address the circumstances, including, if appropriate agreeing to the scope of, and allocation of costs for, any initial investigation that may be necessary to ascertain whether the discovery is within the scope of Environmental Services. This consultation shall be in accordance with paragraph 42 of the AOC, and shall result in a written determination by EPA as to whether the condition is within the definition of Environmental Services, Special Exclusions, or Navy Retained Conditions ~~If the Parties cannot agree if the discovery is within the scope of Environmental Services, and a mutually agreeable solution to address the circumstances is not reached within a reasonable period of time after commencement of discussions between the SFRA and the Navy and, if applicable, the Environmental Regulatory Agencies~~ If, following good faith negotiations, the Parties do not agree with EPA's written determination, the Parties reserve the right to initiate the dispute resolution process as described in Section 1001 of this Agreement.

i. Notwithstanding the preceding Section 301(h) the SFRA shall have the right, but not the duty, to take or cause to be taken the following actions within the ACES with respect to an Environmental Condition (except for Military Munitions and chemical or biological warfare agents) that is not within the scope of the Environmental Services:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(1) **Investigation Activities.** Other than a condition subject to emergency action, if the SFRA discovers a condition it reasonably believes is an Environmental Condition that is not within the scope of the Environmental Services, the SFRA shall use its reasonable efforts to avoid incurring costs or obligations with respect to the Environmental Condition. If, despite using commercially reasonable efforts to avoid incurring such costs, the SFRA incurs costs or obligations with respect to the Environmental Condition, the SFRA may seek reimbursement from the Navy for the reasonable investigation costs, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001.

(2) **Emergency Actions.** The SFRA may take immediate action to address an imminent threat to human health or the environment. The SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001, for the reasonable response costs related to such emergency action regarding a Navy Retained Condition where notification cannot practicably be provided to the Navy before such action needed to be taken OR notification is provided to the Navy before such action and the Navy agrees to permit the SFRA to take such emergency action under terms agreed to by the Parties.

(3) **Notice.** To the extent that the SFRA takes or causes to be taken actions in accordance with Section 301.i(1) and (2), the SFRA shall notify the Navy of such action as soon as practicable but no later than fifteen (15) business days after the SFRA takes or causes to be taken any such action. If the Navy disputes an SFRA action taken under Section 301.i(1) and (2), the Navy may initiate dispute resolution procedures under Section 1001.

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any Environmental Condition that is not within the Scope of the Environmental Services and that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein and substantially in the form shown in Appendix 4.

l. The SFRA shall conduct annual site inspections pursuant to LUC documents, CERCLA RODs, LUC RDs, and RMPs, ~~the LUC RD and CERCLA RODs, AOC, CRUP, and deeds~~ and shall assure preparation of any applicable compliance monitoring reports and certificates associated with ~~environmental land use restrictions~~ LUCs on the ACES. [NOTE: Subject to SFRA preparing a proposal for the scope and cost of IC monitoring and enforcement]

Section 302. Obligations of the Navy

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

a. [NOTE: This new text is designed to provide a parallel with the SFRA Obligations language in Section 301, and to avoid duplication with 401, which discusses the Navy's maximum funding obligation] In consideration of the SFRA's agreement to perform or cause to be performed the Environmental Services, and otherwise comply with the terms of this Agreement and the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the Navy agrees to make an advance payment (s) to the SFRA for performing the Environmental Services during the term of this Agreement in the total amount of \$_____, which shall be paid as follows:

_____[NOTE: If there are going to be multiple payments, ETCA needs to specify the exact amount and timing of each payment.]

The Navy's obligation to pay hereunder is subject to the availability of appropriated funds and this shall not be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

b. Notwithstanding the provisions of Section 302.a. above, prior to payment being made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved by the Navy and the SFRA.

c. Within a reasonable time after the SFRA has provided the Navy with proper documentation establishing that Regulatory Closure has been obtained for the ACES, or portions of the ACES, as set forth in the AOC, and a written request from the SFRA to issue the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA warranty to be recorded.

d. The Navy shall comply with the procedures and terms set forth in Sections 301(h) and (i) with respect to discovery of Environmental Conditions that are not within the scope of the Environmental Services.

Article IV FUNDING LIMITATION AND BUDGETING

Section 401. Navy's Funding Limitation

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

The maximum Navy funding obligation for the Environmental Services to be performed by the SFRA under this Agreement is \$ _____. The Navy will not pay any costs of performing Environmental Services that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation.

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

INSERT THE UIC AND LINE OF ACCOUNTING HERE

Article V PAYMENT SCHEDULE

Section 502. Payments

a. The amount provided by the Navy is an advance payment or payments to be made to the SFRA. Such payment or payments shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

(1) The SFRA shall maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds from the escrow account to the SFRA and their disbursement by the SFRA to an independent third party payee.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(2) Within a reasonable period of time after receiving the advance payment from the escrow account, the SFRA shall deposit the funds with an independent third party payee . Such independent third party payee shall be responsible for making all payments to a subsequent transferee and/or environmental contractor(s), with whom the SFRA enters into an agreement to perform the Environmental Services or to supervise the performance of the Environmental Services. Funds shall be considered disbursed by the SFRA when the following has occurred:

(A). The SFRA does not retain possession of the funds;

(B). The SFRA cannot get the funds back upon demand (this does not include allowable costs incurred by the SFRA for which the SFRA requests proper reimbursement from the independent third party payee);

(C). The independent third party payee is an independent stakeholder from the SFRA and from the party or parties with whom the SFRA enters into an agreement to perform the Environmental Services or supervise the performance of the Environmental Services, and is not the agent of the SFRA;

(D). The SFRA receives something in exchange for the transfer of funds to the independent third party payee, such as a contractual promise to hold the funds and make payments in accordance with specified procedures.

(3) Any agreement by the SFRA with an independent third party payee must also include the above provisions and satisfy the requirements of 32 CFR §33.21(c).

(4) Interest. Any interest earned on the advance payment while in the escrow account pending transfer to the SFRA and any interest earned on the advance payment by the SFRA prior to the disbursement of those funds by the SFRA to the independent third party payee must be returned to the Navy in accordance with 32 CFR §33.21(h)(2)(i). However, any interest earned on those funds after disbursement from the SFRA to the independent third party payee in accordance with Section 502.a. (2)(A)-(D) are considered funds to be utilized for the purposes of this Agreement.

Article VI PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

Article VII GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. The requirements and provisions described in Subsections 701.a and 701.b below shall survive such termination, but only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above:

a. SFRA requirements to perform applicable Long-Term Obligations.

b. The SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

[Need to Add NAVFAC Bob Griffin]

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

With Regard to the SFRA:

San Francisco Redevelopment Agency

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

James Morales, General Counsel
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Deputy City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Agreement and any additional records, book papers and documents that are otherwise required to be retained under this Agreement or the AOC. This includes all such records in automated forms ("Records") that are within the SFRA's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The SFRA shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. SFRA record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The SFRA shall allow the Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the Navy reasonably determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any officer, agent, employee, or contractor thereof.

Section 710. Change of Circumstances

Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to perform this Agreement.

Section 711. Liability and Indemnity, Waiver and Release

a. The SFRA's Obligations and Limited Waiver of Statutory Rights

(1) In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the following, provided, however the SFRA's indemnification obligations under this subparagraph (a)(1) shall in no event apply to NRCs or Special Exclusions except to the extent that the NRCs or Special Exclusions are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest:

(A) any claims incurred in responding to Environmental Conditions in the ACES and which are within the scope of Environmental Services; or address otherwise any Ineligible Work performed by or on behalf of the SFRA;

(B) any claims for Regulatory Oversight Costs ;

(C) all claims for personal injury or property damage to the extent

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

caused by the SFRA or its contractors in the course of performing the Environmental Services;

(D) all natural resource damage claims pursuant to 42 U.S.C. Section 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its contractors or its successors in interest;

(E) all costs arising from the performance of the Environmental Services which SFRA performs or causes to be performed;

(F) all costs of additional remediation required on or within the ACES as a result of a change in land use from that upon which the initial remedial action selection decision was based when Regulatory Closure was completed;

(G) all costs associated with the correction of any failure of any Navy-selected remedy implemented by the SFRA, but only to the extent such costs are directly attributable to the poor workmanship or negligence of the SFRA or its contractors in the performance of said implementation;

(H) all costs arising from the correction of any failure of any remedy both selected and implemented by the SFRA; and

(I) all costs arising from or associated with claims addressed in the Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

(2) With regard to the ACES, the Parties agree that the SFRA has provided financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C. Section 9620(h)(3)(C)(ii).

(3) Except as otherwise expressly provided by this Agreement, this Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA may have, in the absence of this Agreement, to take legal action to require the Navy to act with respect to NRCs or Special Exclusions, or to seek damages resulting from the Navy's performance or failure to perform any actions with respect to NRCs or Special Exclusions. Except as otherwise expressly provided by this Agreement, this Agreement shall also not be construed to limit, expand or otherwise affect any right that the Navy may have, in the absence of this Agreement, to take legal action against the SFRA.

(4) Nothing in this Section creates rights of any kind in any person or entity other than the Navy and the SFRA.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(5) The SFRA and the Navy agree that the Environmental Services to be caused to be performed by the SFRA in accordance with the terms of this Agreement does not include any work relating to, nor is the SFRA responsible for indemnification of the Navy for any work related to, NRCs or Special Exclusions except to the extent that the NRCs or Special Exclusions are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest.

(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action associated with or as a result of environmental conditions in the ACES and within the scope of Environmental Services;

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to NRCs or Special Exclusions; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD except to the extent such disturbance or alteration is necessary to comply with the AOC as a result of potential or actual remedy failure or as a result of addressing Environmental Conditions other than those addressed by the cover, cap, or other environmental remedy. In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to this Agreement for which it has already been paid pursuant to the Agreement.

(D) Any personal injury or property damage to the extent that it did not occur prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

b. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the SFRA may have against the Navy.

c. General Liability Policy Provisions: All general liability insurance which the SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may reasonably approve. All policies issued for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to a third party any rights of action which the SFRA may have against the Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

d. Delivery of Policies: The SFRA will provide the Navy with a certificate of insurance or statement of self insurance evidencing the insurance required for the SFRA. At least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

e. Environmental Insurance Requirements. Prior to the conveyance of any portion of the ACES to SFRA, SFRA shall procure environmental insurance policies approved by the Navy, providing "cost cap" or "stop loss" coverage for cost overruns associated with implementing the work required by the CERCLA RODs and further providing pollution legal liability or similar coverage, to the extent available, for Environmental Conditions not addressed by the CERCLA RODs and for third party liability claims associated with Environmental Conditions. Any changes, amendments or modification to the environmental insurance policies must be approved by the Navy: provided, however, that any modification to the scope of work endorsement to the "cost cap" element of the Environmental Insurance Policies resulting from discovery of Unknown Conditions Discovered During the Course of Remediation shall not require Navy approval.

f. In the event that the SFRA remediation contractor is found to be in a "default" condition and the SFRA moves to hire a replacement contractor, the SFRA shall consult with the Navy prior to selecting a replacement contractor.

Section 713. Reports

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

To assure that the Navy will receive from the SFRA the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA provide additional information concerning the environmental condition of the ACES reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as possible after any such request is made, if the SFRA can reasonably obtain and release such information, the SFRA shall provide the Navy access to any documents containing such requested information. In any event, the SFRA agrees to provide the Navy such access within ten (10) business days of the Navy's information request.

Section 714. Officials Not to Benefit

The SFRA acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

Section 715. Representations

a. The Navy represents that:

(1) it is fully authorized to enter into this Agreement;

(2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and

(3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

(1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,

(2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,

(3) any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

respect to NRCs or Special Exclusions, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

Article IX PROCUREMENT

Section 901. SFRA Contracts

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

b. Definition. In this section, the term "base closure law" means the following:

(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) The Defense Base Closure and Realignment Act of 1990, as amended (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

c. Applicability - Any preference given under subsection (a) shall apply only to contracts entered into after the base closure law was enacted.

Article X TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 Party written notice of such dispute. Such written notice will include, to the extent available,
2 all of the following information: the amount of monetary relief claimed or the nature of other
3 relief requested; the basis for such relief, and; any documents or other evidence pertinent to the
4 claim.

5
6 c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve
7 the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days
8 after a notice of dispute is received. Should staff-level discussions not resolve the dispute
9 within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to
10 elevate the dispute to designated mid-level management. Mid-level management shall then
11 attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after
12 receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties
13 agree to then raise the issue with their respective senior-level management. Senior -level
14 management shall then attempt to resolve the dispute within thirty (30) days (or longer, if
15 agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to
16 determine the person(s) to represent it at any meeting convened under this section.

17
18 d. If the dispute cannot be resolved after exhausting the remedies under Section
19 1001c. above, the dispute shall be appealed to the Director of the Base Realignment and
20 Closure Office at the address indicated in Section 707 above. Such appeal must be written, and
21 contain all of the documentation and arguments necessary for a decision. The Director shall
22 render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the
23 SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA
24 may have available at law or in equity.

Section 1002. Enforcement

25
26
27
28
29
30 Either party may enforce this Agreement according to its terms. Without limiting either
31 party's enforcement rights, in accordance with the terms of 32 CFR Section 33.43, Enforcement,
32 for noncompliance of Grantee or subgrantee shall include:

33
34 a. Temporarily withholding cash payments pending correction of the deficiency by
35 the SFRA or Sub-grantee or more severe enforcement action by the awarding agency;

36
37 b. Disallowing (denying both use of funds and matching credit for) all or part of
38 the cost of the activity or action that is not in compliance;

39
40 c. Wholly or partly suspending or terminating the current award for the SFRA's or

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.

d. Withholding further awards under this Agreement; and

e. Taking other remedies that may be legally available.

Section 1003. Termination

a. This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.

b. Reserved.

c. Reserved.

d. If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has expired. The existence of a material breach shall be finally determined under the dispute resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises from any failure to make a required payment under this Agreement.

e. If this Agreement is terminated for reasons other than those set forth in Section 701 above, the SFRA shall immediately:

(1) Stop work;

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities;

(3) Terminate all subcontracts;

(4) With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(5) Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Navy Grants Officer may direct; and

(6) Return or cause to be returned to the Navy any funds held by the SFRA or the independent third party payee not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.

The SFRA agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the SFRA's contractors and their subcontractors, so as to effect the provisions above.

f. If this Agreement is terminated under this Section 1003, the status of the parties with respect to Environmental Conditions at the ACES shall revert to the status that existed immediately preceding the effective date of this Agreement.

g. A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.

Section 1004. Effects of Suspension and Termination

a. Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:

(1) the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and

(2) the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.

b. The enforcement remedies specified in this section do not relieve the SFRA or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25, including the restrictions on entering into a covered transaction with any party which is

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

**Article XI
LEGAL AUTHORITY**

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder the party's abilities to perform its duties under this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement, by their authorized representatives, hereby cause this Agreement to be executed.

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____
NAME:
TITLE: Director

Dated: _____

THE UNITED STATES OF AMERICA

By: _____
Mr. Robert Griffin
Assistant Commander for Acquisition, Naval Facilities
Engineering Command

Dated: _____

APPENDIX 9

Technical Specifications and Requirements Statement

1.0. INTRODUCTION

In accordance with the terms of the Early Transfer Cooperative Agreement (ETCA), this Technical Specifications and Requirements Statement (TSRS) provides the U.S. Department of the Navy's (Navy) general specifications for the San Francisco Redevelopment Agency (SFRA) regarding the scope of remediation activities that comprise the Environmental Services as defined in the ETCA. ~~If there is any conflict between the provisions of the TSRS on the one hand, and the provisions of the main body of the ETCA, Remedial Design reports, and/or CERCLA RODs on the other, the terms of the main body of the ETCA, Remedial Design reports, and/or CERCLA RODs shall govern.~~

The Navy and SFRA intend to complete an early transfer of the ACES pursuant to Section 120(h)(3)(C) of CERCLA in order to facilitate redevelopment of the property. SFRA's responsibilities for the ACES are described in the ETCA and specific remedial actions are summarized in the remedial activities table (see Table 1). Table 1 lists those environmental sites of the ACES requiring remediation by SFRA and generally describes the activities to be accomplished for each site. Activities described in Table 1 may be modified by SFRA pursuant to the ETCA, with the exception of ESDs or ROD amendments, which amendments shall be addressed in accordance with Section 301(a) of the ETCA, as long as said modifications do not affect SFRA's ability to achieve Regulatory Closure. Activities described in Table 1 will be undertaken in conjunction with redevelopment activities where the opportunity exists.

The SFRA shall complete Environmental Services for Environmental Conditions that are necessary to (1) comply with the CERCLA Records of Decision (ROD) and applicable Remedial Design Package reports (including Design Basis Report, Remedial Action Monitoring Plan [RAMP], Land Use Control Remedial Design [LUC RD], and Operation and Maintenance [O&M] Plan) and Remedial Action Work Plan (RAWP) reports, (2) address AOC requirements between SFRA and the Environmental Regulatory Agencies, (3) achieve Regulatory Closure throughout the ACES, and (4) comply with Long-term Term Obligations.

If there is any conflict between the provisions of the TSRS on the one hand, and the provisions of the main body of the ETCA, AOC, Remedial Design Package Reports, and/or CERCLA RODs on the other, the terms of the main body of the ETCA, AOC, Remedial Design Package Reports, and/or CERCLA RODs shall govern.

2.0. TECHNICAL SPECIFICATIONS AND REQUIREMENTS

4841-5419-7767.2

LEGAL US W # 66961413.6

The major components of the remediation activities that comprise the Environmental Services are outlined below:

1. Project management;
2. Remedial action work plan;
3. Remedy implementation;
4. Environmental insurance;
5. Remedial Action Completion Report and Regulatory Closure documentation;
6. Public involvement; and,
7. Submittal of documents and achievement of project schedule.

SFRA shall provide the necessary qualified and licensed personnel, equipment, and resources to successfully execute the Environmental Services. Project activities and responsibilities are outlined in the following sections and additional details on project activities listed below are included in Section 3.0 of this TSRS. The following Sections more fully specify the scope of the activities that comprise the Environmental Services that SFRA will conduct under the ETCA on behalf of the Navy.

2.1. Project Management

The complexity, magnitude, and unique nature of the cleanup at the ACES requires management and coordination of project activities to ensure that: (1) stakeholders are kept informed of the project status; (2) existing or potential problems are addressed; and (3) any changes that may be required to prudently manage the project are addressed. Project stakeholders include the Department of the Navy Base Realignment and Closure (BRAC) Program Management Office (PMO), Naval Facilities Engineering Command (NAVFAC), the Environmental Regulatory Agencies, SFRA, and Lennar Urban. To ensure that the requirements of the AOC, CERCLA, and the NCP are being met, the Navy may consult with SFRA, including review, comment, and/or concurrence on documents as set forth in Table 2. For documents requiring concurrence, the Navy shall have the right to review and approve the document before such documents are submitted to the Environmental Regulators.

SFRA shall maintain a project document repository, as well as provide copies to the Navy for the Navy's maintenance of the Administrative Record files as required by CERCLA, the NCP, and other applicable laws and regulations. SFRA shall be required to include the draft and final RAWP documents and related review comments, responses to comments, and technical support documents, ~~etc~~ in a project repository as per Section 3.2 of this TSRS and also provide copies to the Navy for inclusion by the Navy in the Navy's CERCLA restoration post-decision record file. SFRA shall also be required to provide copies of documents to the Navy that it develops and that the Navy relies upon for ROD amendments or ESDs (see Section 300.825(a)(1) of the NCP) and 5-Year Reviews for the years 2013 and 2018. Documents provided to the Navy for inclusion in

Commented [PH1]: If other documents are required, they need to be listed.

Formatted: zzmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Formatted: Default Paragraph Font

the Navy's CERCLA restoration post-decision record file shall meet the requirements listed in Attachment 1.

SFRA shall also prepare and submit periodic progress reports (as defined in Section 3.1) to the Navy that document technical progress to date, depict upcoming work, and describe any technical issues confronted with successful or proposed solutions. Finally, SFRA shall hold conference calls, as defined in Section 3.3, with the Navy representative on an as-needed basis as reasonably determined by the Navy to discuss the progress of the cleanup of the ACES and the status of ongoing documents and reports being reviewed by the Navy representative. The Navy representative shall be the BRAC Environmental Coordinator, or designated successor. Additional details on project management responsibilities are included in Sections 3.1 through 3.3 of this TSRS.

2.2. Remedial Action Work Plans

SFRA shall prepare the RAWPs as required under the AOC to provide for the construction of the remedy as set forth in design plans and specifications in the Remedial Design Package Reports~~approved final remedial design documents~~ ("Final Remedial Design Package Parcel B, ~~Excluding IR Sites 7 and 18~~" [ChaduxTt, date TBD], and "Final Remedial Design Package Parcel G" [ChaduxTt, date TBD]). Concurrently with its submission to EPA, DTSC, and RWQCB, SFRA shall submit draft and draft final RAWPs to the Navy for review, ~~and comment, and approval~~ in accordance with Table 2. The RAWPs may also include any revisions to the Remedial Design Package Reports~~approved final remedial designs~~ to address modifications desired by SFRA to support redevelopment. Any revisions to the Remedial Design Package Reports~~remedial designs~~ must still meet the requirements of the CERCLA RODs and the AOC.

2.3. Remedy Implementation

SFRA shall use funds provided under the ETCA to conduct the remedy implementation tasks outlined in the RODs and ensure that all remedial actions are performed in accordance with the terms of the ROD, Remedial Design Package Reports~~RD~~, RAWP, AOC, CERCLA, the NCP and in support of the reuse specified in the reuse plan prepared by SFRA (the "1997 Reuse Plan")~~- If SFRA plans to amend the 1997 Reuse Plan, it shall notify the Navy representative before proceeding with any of its associated obligations under the ETCA with respect to such amendment.~~

SFRA shall be responsible for developing documents associated with the remedial actions to achieve Regulatory Closure.

The Navy has followed the CERCLA process in the prior characterization of environmental conditions, analysis of remedial action alternatives, and selection of the remedy. Site characterization data are available in various reports referenced in Appendix A herein and in the Administrative Record files. The site characterization data have been used to select the

remediation components and the site-specific activities summarized in the remedial activities required by the CERCLA RODs and are summarized in Table 1. The remedial actions, including ~~institutional controls~~ Land Use Controls, for the ACES will comply with the AOC, CERCLA, the NCP, and other applicable state and federal laws and regulations and shall be protective of human health and the environment. The CERCLA RODs and the AOC set forth the specific components of the remedy to be implemented at the ACES. Those remedial components are summarized below:

2.3.1. Soil Vapor Extraction (SVE) System Expansion and Operation

SFRA shall expand and operate the SVE system inside Building 123 as described in the Parcel B Remedial Design Package Report ~~“Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~. SFRA shall decommission the SVE system after approval from the Environmental Regulatory Agencies. Details on operation of the SVE system including monitoring, reporting, and ~~O&M~~ maintenance activities are contained in the ~~“Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~ Parcel B Remedial Design Package Reports. The SVE system shall be operated until the remedial action objectives specified in the Parcel B ROD, Parcel B Remedial Design Package Report, and RAWP have been met. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

2.3.2. Groundwater Remediation

SFRA shall inject polylactate at the IR Site 10 VOC plume for source control and to enhance natural attenuation. Injection and monitoring of the natural attenuation will be conducted in accordance with requirements and procedures specified in the Parcel B Remedial Design Package Report and the RAWP. Details on the extent of the IR Site 10 VOC plume as well as information on monitoring and reporting are included in the Parcel B Remedial Design Package Report ~~“Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~. SFRA shall conduct groundwater remediation until the remedial action goals for groundwater as presented in the approved CERCLA RODs and the RAMPs contained in Remedial Design Package Reports ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~, and ~~“Final Remedial Design Package Parcel G” (ChaduxTt, date TBD)~~. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

2.3.3. Covers over Soil

SFRA shall construct a durable cover over the ACES that (1) meets the specifications of the Remedial Design Package Reports ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~, and ~~“Final Remedial Design Package Parcel G” (ChaduxTt, date TBD)~~, and (2) meets the requirements of San Francisco Department of Public Works or the San Francisco Department of Building Inspection codes, and (3) fulfills the requirements of the

AOC. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for covers must be achieved no later than 7 years after the date of execution of the ETCA.

2.3.4. Shoreline Revetment

SFRA shall construct a shoreline revetment for certain portions of the shoreline at Parcel B to prevent erosion and migration of underlying soil and sediment into San Francisco Bay. An example of an acceptable revetment design is presented in the Parcel B Remedial Design Package Report ~~“Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~. The shoreline revetment shall: meet the specifications of the Parcel B Remedial Design Package Report ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD)~~, or otherwise be approved by the Environmental Regulatory Agencies. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for shoreline revetment must be achieved no later than 7 years after the date of execution of the ETCA.

Commented [deg2]: Need to add a map here or reference a map in the ROD or RD.

2.3.5. Soil Vapor Intrusion Mitigation

SFRA shall design and implement engineering controls to prevent exposure to VOCs in soil gas that may accumulate within existing or future enclosed structures at concentrations that would pose unacceptable risk via inhalation of indoor vapors, based on the planned reuse. The Navy has established an initial ARIC for VOC vapors based on soil gas surveys conducted prior to redevelopment. The initial ARIC is documented in the technical memorandum summarizing the results of the soil gas surveys to be prepared by the Navy following completion of the surveys and submitted to the Environmental Regulatory Agencies for review, comment, and approval (Reference TBD). Design goals are presented in the ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18”, (ChaduxTt, date TBD) and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD)~~ Remedial Design Package Reports.

Vapor mitigation shall meet the remedial action objectives stated in the AOC, ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD)~~ Remedial Design Package Reports, and the requirements for vapor mitigation in “Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final” dated December 15, 2004, and revised on February 7, 2005. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

~~Any proposed construction of enclosed structures within the Parcel B VOC ARIC must be approved by the FFA signatories prior to construction.~~ The reduction in any VOC vapor risk can be achieved through engineering controls or other design alternatives that meet the specifications set forth in the ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date~~

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Formatted: Default Paragraph Font

~~TBD~~ Remedial Design Package Reports and Remedial Action Work Plan. Enclosed structures within the Parcel B ARIC shall not be occupied until the Owner has requested and obtained necessary approvals that any necessary engineering controls or design alternatives have been properly constructed and that VOC vapor risk level is acceptable.

2.3.6. Public Involvement

Formatted: Font: Bold

Public involvement is required to obtain community input and maintain community understanding and support for the cleanup actions on the ACES. SFRA shall be responsible for notification to, involvement with, and solicitation of input from the public as required by the AOC, CERCLA, and the NCP, in coordination with the Environmental Regulatory Agencies and the Navy. The Navy will continue to be involved with other property on HPNS not affected by this early transfer and will require coordination of public involvement activities. SFRA will provide to the Navy, in timely fashion, pertinent information regarding its public involvement activities associated with the cleanup actions at the ACES, in order for the Navy to meet its site-wide community relations requirements under the Community Involvement Plan, CERCLA, and the NCP.

SFRA shall provide the Navy with two paper copies and one electronic copy of all documents that are submitted to the Environmental Regulatory Agencies and other parties for inclusion by the Navy in the Navy's CERCLA restoration post-decision record file. Documents provided to the Navy for inclusion in the Navy's CERCLA restoration post-decision record files shall meet the requirements listed in Attachment 1.

2.3.6. Long-term Groundwater Monitoring

SFRA shall monitor elevations of and chemical concentrations in groundwater according to the requirements in the RAMPs that are included in "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, date TBD), and "Final Remedial Design Package Parcel G" (ChaduxTt, date TBD). Groundwater monitoring shall meet the remedial action objectives stated in the AOC, "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, date TBD), and "Final Remedial Design Package Parcel G" (ChaduxTt, date TBD). Long term groundwater monitoring shall continue until such time as the regulatory agencies have issued regulatory closure for groundwater conditions (See Section 2.5).

2.3.7. Five-year Reviews

SFRA shall prepare five-year review reports beginning with year 2023 and submit them to the Navy for review and approval in accordance with Table 2 and then to EPA for review and comment. Reports shall be similar to previous five-year review reports for HPNS and consistent with EPA guidance. The Navy will prepare the five-year review reports for 2013 and 2018 and submit them to EPA for review and comment.

2.3.87. Implementation of Institutional Controls and other Long-Term Obligations

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Formatted: Default Paragraph Font

4841-5419-7767.2

2.3.7.1 Land Use Controls

SFRA shall maintain, monitor, inspect and enforce Land Use Controls, including monitoring implementation of corrective actions for violations of the Land Use Controls.

Formatted: Font: Bold

2.3.7.2 Institutional Controls

SFRA shall maintain and enforce all institutional controls including deed restrictions as specified in the CRUP(s) and Deed(s) that are signed and recorded at the time of transfer of title.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

2.3.7.3 Long-term Operation and Maintenance

SFRA shall ensure compliance with the Operation and Maintenance requirements of the O&M Plans for the durable covers and revetment, as well as revisions to the O&M Plans that may be made and approved by the Environmental Regulatory Agencies pursuant to the AOC to reflect the remedy as actually constructed. As stated in the current O&M Plans, revisions to O&M Plans may include O&M Plans that are written in the future for O&M activities required for soil vapor intrusion mitigation systems built as part of an enclosed occupied structure in a VOC ARIC.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

2.3.7.4 Long-term Groundwater Monitoring

SFRA shall monitor elevations of chemical concentrations in groundwater according to the requirements in the RAMPs that are included in Remedial Design Package Reports. Groundwater monitoring shall meet the remedial action objectives stated in the AOC Remedial Design Package Reports. Long term groundwater monitoring shall continue until such time as the regulatory agencies have issued regulatory closure for groundwater conditions (See Section 2.5).

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

2.3.7.5 Long-term Public Involvement

Public Involvement activities as described in Section 2.3.6 shall be maintained as long as required by the Regulatory Agencies.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

2.3.7.6 Five-year Reviews

SFRA shall prepare five-year review reports beginning with year 2023 and submit them to the Navy and EPA for review and approval in accordance with Table 2. Reports shall be similar to previous five-year review reports for HPNS and consistent with EPA guidance. The SFRA will provide the Navy with records and reports for the Navy's preparation of the five-year review reports for 2013 and 2018. The Navy shall prepare the 2013 and 2018 reports and submit them to EPA for review and comment.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: zmpTrailerItem

Formatted: Line spacing: Exactly 10 pt

Formatted: Default Paragraph Font

SFRA shall implement the institutional control requirements of the LUC RDs that are included in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), and CRUP(s) and Deed(s) that are signed and recorded at the time of transfer of title. SFRA shall ensure controls remain in place and shall monitor implementation of corrective actions for violations. Details are contained in the LUC RD documents that are included in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD).

SFRA shall ensure compliance with the requirements of the O&M plans that are included in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), as well as revisions to the O&M plans that may be made and approved by the Environmental Regulatory Agencies pursuant to the AOC to reflect the remedy as actually constructed.

2.4. (Reserved. (NOTE: procuring the insurance policies is not part of the scope of work; it is requirement of the ETCA and the ETCA can speak for itself – it provides for Navy approval of the policies.)

2.5. Remedial Action Completion Report (RACR) and Regulatory Closure Documentation

SFRA shall submit to the Navy, for review and comment in accordance with Table 2, RACRs and Certification of Completion of Remedial Action issued pursuant to the AOC for the ACES in accordance with requirements of the AOC. As set forth Section 208 of the ETCA, the term “Regulatory Closure” means Environmental Regulatory Agency approval, by issuance of one or more Certifications of Completion of Remedial Action for CERCLA response actions that collectively address the entire ACES, pursuant to the procedures set forth in the AOC and to the extent the Environmental Services include activities not covered by the AOC, written Environmental Regulatory Agency approval that no further action is required for that condition. Receipt of the Certificate of Completion will document the Environmental Regulatory Agencies’ written confirmation of Regulatory Closure.

2.6. Public Involvement

Public involvement is required to obtain community input and maintain community understanding and support for the cleanup actions on the ACES. SFRA shall be responsible for notification to, involvement with, and solicitation of input from the public as required by the AOC, CERCLA, and the NCP, in coordination with the Environmental Regulatory Agencies and the Navy. The Navy will continue to be involved with other property on HPNS not affected by this early transfer and will require coordination of public involvement activities. SFRA will provide to the Navy, in timely fashion, pertinent information regarding its public involvement

City Team Redline 4/22/11 Navy Redline 1-10-11

~~activities associated with the cleanup actions at the ACES, in order for the Navy to meet its site-wide community relations requirements under the Community Involvement Plan, CERCLA, and the NCP.~~

~~SFRA shall provide the Navy with two paper copies and one electronic copy of all documents that are submitted to the Environmental Regulatory Agencies and other parties for inclusion by the Navy in the Navy's CERCLA restoration post decision record file. Documents provided to the Navy for inclusion in the Navy's CERCLA restoration post decision record files shall meet the requirements listed in Attachment 1.~~

2.76. Submittal of Documents and Achievement of Project Schedule

SFRA shall submit all documents required under the AOC to be approved by the Environmental Regulatory Agencies to the Navy in accordance with Navy Review Roles as set forth in Table 2 and procedures set forth in this section.

SFRA shall provide the Navy representative with two paper copies and one electronic copy of all documents and reports required under the ETCA to be provided to the Navy, including electronic copies of all geographic information system (GIS) data. The Navy representative will be responsible for reviewing documents and reports submitted to the Navy in a timely manner to support the project schedule, concurrent with regulatory review and schedules. The Navy representative reserves the right to obtain professional assistance, at its own cost, to review documents and reports that SFRA submits to the Navy.

For documents submitted to the Navy for review in accordance with Table 2, if the Navy has comments or concerns, the Navy will notify SFRA within a reasonable time period, and discuss the concerns and comments with SFRA. SFRA shall provide documents to the Navy ~~in a time and manner that will afford the Navy sufficient time for review and comment, or for approval, as set forth above and as reflected in Table 2, before the documents are submitted~~concurrently with the submission to the appropriate Environmental Regulatory Agency. ~~The appropriate "sufficient time" shall be assessed on a case-by-case basis in consideration of the nature and volume of the documents provided for Navy review.~~ To the extent the Navy does not concur or approve of a document for which its concurrence or approval is required in accordance with Table 2, the Navy shall state in detail in writing its reasons for its nonconcurrence or disapproval. If the EPA's lead Remedial Project Manager approves a document for which the Navy's concurrence or approval is required and the Navy disapproves that document, the EPA Region IX Director of Federal Facilities shall make the final determination regarding whether to approve or disapprove that document. The Navy's review of the documents and reports not listed on Table 2 will be limited to the following scope:

- To ensure consistency with the ETCA and CRUPs
- To ensure consistency with CERCLA, the NCP, and any requirements applicable to non-CERCLA environmental issues

- To ensure that ETCA funds that have been or will be spent are in compliance with the scope as defined in Section 101 of the ETCA

In addition, if the Navy representative deems it necessary, the Navy representative may access the ACES for purposes of on-site quality assurance and verification of remediation performance in accordance with the ETCA and deed covenant.

3.0. ADDITIONAL INFORMATION

3.1. Project Progress Reports

SFRA shall submit project performance and financial reports to the Navy in accordance with Sections 301(f)(2) and (3) of the ETCA. Reports shall be in a format and contain information to enable the Navy to verify SFRA's compliance with the ETCA. Progress reports required to be submitted to the Environmental Insurer and EPA under the AOC shall be deemed adequate for purposes of progress reports required to be provided to the Navy under this Section 3.1.

3.2. Project Repository

SFRA shall maintain a project repository for the ACES environmental services at an easily accessible location that is open to the public near HPNS for project-related environmental remediation information generated after property transfer to SFRA.

3.3. Conference Calls and Briefings

SFRA shall brief the Navy representative on an as-needed basis but in no instance more often than monthly on the status of the remediation activities at the ACES or other concerns regarding progress reports or other reports developed during the performance of the environmental services. Briefings will be conducted by means of conference calls that SFRA shall arrange as reasonably requested by the Navy.

Tables

- 1 Remedial Activities Required by the CERCLA RODs
- 2 Document Matrix Identifying Navy Review Roles

Appendix

A Applicable and Relevant Environmental Documents

Attachment

City Team Redline 4/22/11~~Navy Redline 1-10-11~~

- 1 Environmental Work Instruction EVR.4, Implementing and Maintaining the CERCLA Administrative Record and Compendium at NAVFAC Southwest
- 2 Environmental Insurance Policies

Formatted: Line spacing: Exactly 10 pt

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

TABLE 1
REMEDIAL ACTIVITIES REQUIRED BY THE CERCLA RODS

Parcel	Remedial Action	Description
B	Soil Vapor Extraction	Operate SVE system at Building 123
B	Groundwater Treatment	Inject polylactate at IR Site 10 VOC plume
B and G	Covers	Install covers over all areas; various cover types (soil, asphalt, buildings, etc)
B	Shoreline Revetment	Construct revetment
B and G	Control of Soil Gas	Install and maintain vapor <u>intrusion</u> mitigation systems
B and G	Long-Term Obligations	Monitor groundwater in accordance with the RAMPs
		Conduct O&M activities in accordance with the O&M plans
		Implement and enforce ICs <u>LUCs</u> in accordance with the LUC RDs
		Prepare and submit 5-year review reports
		<u>Continue Public Involvement activities</u>

Notes:

1 Area requiring institutional controls for mitigation of VOC vapors will be refined based on the results of soil gas surveys.

~~IC~~LUC ~~Institutional control~~Land Use Control

IR Installation Restoration
LUC RD Land use control remedial design
O&M Operation and maintenance
RAMP Remedial action monitoring plan
SVE Soil vapor extraction
VOC Volatile organic compound

Refer to the ~~“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD)~~Remedial Design Package Reports for the specific locations of these areas and for the RAMPs, LUC RDs, and O&M plans.

Formatted: Line spacing: Exactly 10 pt

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

Table 2

DOCUMENT MATRIX IDENTIFYING NAVY REVIEW ROLES

The following table identifies documents that must be prepared by the SFRA in accordance with the ETCA and AOC and submitted to the Navy and identifies the Navy's role in reviewing them.

1. Information Only
a. AOC correspondence / documents
b. Public fact sheets
c. Reuse Plan updates
d. Notices of Force Majeure and related documents required by the AOC
e. Statements of Position and other documents submitted by SFRA/Lennar during dispute resolution under the AOC
f. Notices of Noncompliance and Stop Work, Findings of Default issued under the AOC
g. Health and safety plans submitted in conjunction with RAWPs
h. Long-term groundwater monitoring reports
i. Public involvement / community management plans
j. Waste management plans
k. Any other documents for which the AOC specifies that the Navy must be consulted and not otherwise included in category 2 or 3 below
2. Review and Comment
a. Soil vapor extraction system reports (<u>operation</u> , monitoring, <u>O&M and maintenance</u> activities, etc)
b.
eb. Amended PCAPs
ec. Periodic progress reports and schedules including reports in the ETCA and AOC (as provided to the EI underwriter)
fd. Annual IC Compliance Monitoring Reports
he. O&M plans <u>Plans</u>
jf. RACRs (and interim RACRs related to longLong-term-Term obligations <u>Obligations</u>)
kg. Reports, other than those referenced in 2.f. above, related to longLong-term-Term obligations <u>Obligations</u> (O&M inspection reports, etc)
ph. Certification of Completion of Remedial Action

Error! No property name supplied.

4841-5419-7767.2

LEGAL_US_W # 66961413.6

Formatted: Line spacing: Exactly 10 pt

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

3. Review and Concurrence/Approval

~~ea.~~

~~ba.~~ Risk management plans and amendments (to the extent such amendments result in a fundamental change to the risk management plan(s))

~~eb.~~ RAWPs, including alternate cover designs (pre- and post-remediation), shoreline revetment designs, and vapor intrusion mitigation system designs

~~ec.~~ Soil vapor memorandum to adjust the size of the ARIC for VOC vapors

~~ed.~~ Five-year review reports (beginning with year 2023)

~~ee.~~

~~ef.~~ Review and approval to the extent such review and approval is expressly required in the LUC RDs, RMPs, Covenants to Restrict Use of Property (CRUP), and/or Deeds

AOC	Administrative Order on Consent
ARIC	Area requiring institutional controls
EI	Environmental insurance
ETCA	Early transfer cooperative agreement
IC	Institutional control
LUC RD	Land use control remedial design
O&M	Operation and maintenance
PCAP	Petroleum corrective action plan
RACR	Remedial action completion report
RAWP	Remedial action work plan
SFRA	San Francisco Redevelopment Agency
VOC	Volatile organic compound

Explanation of Categories:

“Information Only” means the Navy receives the document in its final form and does not receive draft or draft final versions. The Navy will not provide comments on these documents.

“Review and Comment” means the Navy receives draft, draft final, and final (to the extent such versions are required by CERCLA or voluntarily produced by SFRA if not required) versions of the document and may provide comments for SFRA and Environmental Regulatory Agency consideration.

“Review and Concurrence/Approval” means the Navy receives draft, draft final, and final versions (to the extent such versions are required by CERCLA or voluntarily produced by SFRA if not required) of the document. The Navy shall provide comments ~~and the Navy and SFRA must reach agreement on the resolution of Navy's comments before the document is finalized~~

Formatted: Line spacing: Exactly 10 pt

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

City Team Redline 4/22/11~~Navy Redline 1-10-11~~

~~and the Navy must~~and indicate whether it concurs upon the final document. If the EPA's lead Remedial Project Manager approves a document and the Navy does not approve that document, the EPA Region IX Director of Federal Facilities shall make the final determination regarding whether to approve or disapprove the document.

Formatted: Line spacing: Exactly 10 pt

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

APPENDIX A
APPLICABLE AND RELEVANT DOCUMENTS

The Navy believes that documentation provided with this TSRS represents the most recent and appropriate documentation available for Hunters Point Naval Shipyard and the sites identified in this TSRS. However, if there is a conflict between this information and other site documentation (the existing reports), SFRA is solely responsible for reviewing all available information and forming its independent, professional conclusions and interpretations of site conditions and requirements to meet the objectives of the ETCA. This information is not intended as a substitute for complete analysis of technical data available, nor is it intended to be a guide on how SFRA should address achievement of the performance objectives/standards.

Specific documents may be made available following a request to the Navy, if the documentation can be distributed in a timely manner. Electronic format is not guaranteed.

Applicable and Relevant Documents		
Title	Author	Date
Technical memorandum reporting results of soil gas surveys and delineating the areas requiring institutional controls for VOC vapors	Sealaska	10/10?
Draft Final Remedial Design Package, Parcel B, Excluding Installation Restoration Sites 7 and 18, Hunters Point Shipyard, San Francisco, California	ChaduxTt	7/30/10
Draft Work Plan for Soil Vapor Intrusion Survey, Parcels B, D-1, G, and UC-2, Hunters Point Shipyard, San Francisco, California	Sealaska	7/10
Remedial Action Work Plan for Installation Restoration Sites 07 and 18 at Parcel B; Soil Hotspot Locations at Parcels B, D-1, and G; and Soil Stockpiles at Parcels D-1 and G, Hunters Point Shipyard, San Francisco, California	ERRG	7/10
Draft Final Remedial Design Package, Parcel G, Hunters Point Shipyard, San Francisco, California	ChaduxTt	6/8/10
Final Memorandum, Approach for Developing Soil Gas Action Levels for Vapor Intrusion Exposure at	ChaduxTt	4/30/10

Formatted: Line spacing: Exactly 10 pt

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

City Team Redline 4/22/11 Navy Redline 1-10-11

Applicable and Relevant Documents		
Title	Author	Date
Hunters Point Shipyard, San Francisco, California		
Final Parcels D-1 and G Groundwater Treatability Study Technical Report, IR-09, IR-33, and IR-71, Hunters Point Shipyard, San Francisco, California	Alliance Compliance	3/10
Final Remedial Design Package, Installation Restoration Sites 7 and 18, Parcel B, Hunters Point Shipyard, San Francisco, California	ChaduxTt	1/8/10
Draft Petroleum Hydrocarbon Site Closure Report, Parcels D-1, D-2, and G (Former Parcel D), Hunters Point Shipyard, San Francisco, California	ITSI	12/09
Shoreline Protection Technical Memorandum, Installation Restoration Site 7, Parcel B, Hunters Point Shipyard, San Francisco, California	ChaduxTt	4/3/09
Final Record of Decision for Parcel G, Hunters Point Shipyard, San Francisco, California	Navy	2/18/09
Candlestick Point / Hunters Point Development Project, Initial Shoreline Assessment	Moffat and Nichol	2/09
Draft Removal Action Completion Report, Time-Critical Removal Action for the Methane Source Area at IR-07, Parcel B, Hunters Point Shipyard, San Francisco, California	SES-TECH	2/09
Final Amended Parcel B Record of Decision, Hunters Point Shipyard, San Francisco, California	ChaduxTt	1/26/09
Final Removal Action Closeout Report, Time Critical Removal Action, Parcel B, IR-26, Hunters Point Shipyard, San Francisco, California	Insight	1/09
Final Second Five-Year Review of Remedial Actions, Hunters Point Shipyard, San Francisco, California	Jonas	11/11/08
Final Parcel B Construction Summary Report, Hunters Point Shipyard, San Francisco, California	ChaduxTt	7/25/08
Final Base-wide Radiological Work Plan Revision 2, Hunters Point Shipyard, San Francisco, California	TtEC	5/08
Final Parcel B Technical Memorandum in Support of a Record of Decision Amendment, Hunters Point Shipyard, San Francisco, California	ChaduxTt	12/12/07
Revised Final Feasibility Study for Parcel D, Hunters Point Shipyard, San Francisco, California	SulTech	11/30/07
Technical Memorandum for Contamination Delineation at Remedial Unit C5, Revision 1, Hunters Point Shipyard, San Francisco, California	CE2	11/06
Final Phase III Soil Vapor Extraction Treatability Study Report, Parcel B	ITSI	11/06
Final Basewide Radiological Removal Action, Action Memorandum, Revision 2006, Hunters Point	Navy	4/21/06

Formatted: Line spacing: Exactly 10 pt

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font

Applicable and Relevant Documents		
Title	Author	Date
Shipyards, San Francisco, California		
Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final	DTSC	2/7/05
Historical Radiological Assessment, Volume II, Use of General Radioactive Materials, 1939 to 2003, Hunters Point Shipyard	NAVSEA	8/04
Draft Final Post Construction Report: Decontaminate Process Equipment, Conduct Waste Consolidation, and Provide Asbestos Services in Parcels B, C, D, and E, Hunters Point Shipyard, San Francisco, California	TtFW	7/9/04
Final Cost and Performance Report, Zero-Valent Iron Injection Treatability Study, Building 123, Parcel B	ERRG and URS	6/04
Final Community Involvement Plan, Hunters Point Shipyard, San Francisco, California	ITSI and Tetra Tech	4/04
Final Parcel B Shoreline Characterization Technical Memorandum, Hunters Point Shipyard, San Francisco, California	Tetra Tech and ITSI	3/23/04
Final First Five-Year Review of Remedial Actions Implemented at Hunters Point Shipyard, San Francisco, California	Tetra Tech	12/10/03
Draft Waste Consolidation Summary Report, Parcel B, Hunters Point Shipyard, San Francisco, California	IT Corp	10/23/02
Letter Regarding Concurrence that A-Aquifer Groundwater at the Hunters Point Naval Shipyard, San Francisco, Meets the Exemption Criteria in the State Water Resources Control Board Source of Drinking Water Resolution 88-63. From Mr. Curtis Scott, Water Board. To Mr. Keith Forman, Base Realignment and Closure Environmental Coordinator, Naval Facilities Engineering Command	RWQCB	9/25/03
Final Soil Vapor Extraction Confirmation Study Summary, Building 123, Installation Restoration Site 10, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	8/19/03
Five-Year Review Process in the Superfund Program EPA/540/F/02/004	EPA	4/03
Draft Phase II Soil Vapor Extraction Treatability Study Report, Building 123, IR-10, Parcel B, Hunters Point Shipyard, San Francisco, California	IT Corp	2/14/02
Definition of the Installation Restoration Site 25 Boundary. Memorandum from Mr. Richard Mach, BRAC Environmental Coordinator, to Hunters Point Shipyard administrative record file	Navy	2/1/02

City Team Redline 4/22/11 Navy Redline 1-10-11

Applicable and Relevant Documents		
Title	Author	Date
Information Advisory Clean Imported Fill Material	DTSC	10/01
Comprehensive Five-Year Review Guidance EPA/540/R/01/007	EPA	6/01
Final Technical Memorandum, Parcel B Storm Drain Infiltration Study, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/28/01
Final Remedial Design Documents Amendment, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/20/01
Final Technical Memorandum, Distribution of the Bay Mud Aquitard and Characterization of the B-Aquifer in Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/19/01
Final Explanation of Significant Differences, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	5/4/00
Final Remedial Design Documents, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech and MK	8/19/99
Draft Final Technical Memorandum, Nickel Screening and Implementation Plan, Hunters Point Shipyard, San Francisco, California	Tetra Tech	8/4/99
Polychlorinated Biphenyl Survey/Abatement Report, Hunters Point Shipyard, San Francisco, California	SSPORTS	7/99
Completion Report, Exploratory Excavations, Hunters Point Naval Shipyard, San Francisco, California	IT Corp	6/99
Final Basewide Environmental Baseline Survey, Revision 01, Hunters Point Shipyard, San Francisco, California	Tetra Tech	9/4/98
Final Explanation of Significant Differences, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	8/24/98
Final PCB Assessment and Removal Report for High Voltage PCB Electrical Devices, Hunters Point Shipyard, San Francisco, California	SSPORTS	3/24/98
Final Record of Decision, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	10/7/97
Hunters Point Shipyard Redevelopment Plan	SFRA	7/14/97
Parcel B Feasibility Study, Final Report, Hunters Point Shipyard, San Francisco, California	PRC	11/26/96
Parcel D Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California	PRC and others	10/25/96
Estimation of Hunters Point Shipyard Groundwater Ambient Levels Technical Memorandum, Hunters Point Shipyard, San Francisco, California.	PRC	9/16/96

Formatted: Line spacing: Exactly 10 pt

Formatted: zmpTrailerItem

Formatted: Default Paragraph Font

Applicable and Relevant Documents		
Title	Author	Date
Parcel B Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California	PRC and others	6/3/96
Draft Calculation of Hunters Point Ambient Levels, Hunters Point Annex, San Francisco, California	PRC	8/17/95
Draft Final Parcel D Site Inspection Report Naval Station Treasure Island Hunters Point Annex, San Francisco, California	HLA	1994
Preliminary Assessment Other Areas/Utilities, Naval Station Treasure Island Hunters Point Annex, San Francisco, California	HLA	10/19/90
Initial Assessment Study of Hunters Point Naval Shipyard (Disestablished), San Francisco, California	NEESA	10/84

BRAC	Base realignment and closure
DTSC	Department of Toxic Substances Control
EPA	U.S. Environmental Protection Agency
ERRG	Engineering/Remediation Resources Group
HLA	Harding Lawson Associates
ITSI	Innovative Technical Solutions, Inc.
MK	Morrison Knudsen Corporation
NAVSEA	Naval Sea Systems Command
NEESA	Naval Energy and Environmental Support Activity
PCB	Polychlorinated biphenyl
PRC	PRC Environmental Management, Inc.
RWQCB	San Francisco Bay Regional Water Quality Control Board
SFRA	San Francisco Redevelopment Agency
SSPORTS	Supervisor of Shipbuilding Conversion and Repair, Portsmouth, Virginia, Environmental Detachment
TiFW	Tetra Tech FW Inc.
VOC	Volatile organic compound

City Team Redline 4/22/11~~Navy Redline 1-10-11~~

ATTACHMENT 1

Environmental Work Instruction EVR.4, Implementing and Maintaining the CERCLA
Administrative Record and Compendium at NAVFAC Southwest

21

KCH-2622-0004-0021

Error! No property name supplied.

~~4841-5419-7767.2~~

~~LEGAL US W # 66961413.6~~

Formatted: Line spacing: Exactly 10 pt

Formatted: zzmpTrailerItem

Formatted: Default Paragraph Font